

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

House Bill Number

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[Enter References]

A BILL relating to the elimination of the Higher Education Policy Commission, the creation of the Office of Postsecondary Education, and the amendment of multiple sections of Chapter 18B the West Virginia Code to effect same.

Be it enacted by the Legislature of West Virginia:

1. West Virginia Code §18B-1B-1 is hereby amended as follows:

~~§18B-1B-1. Higher education policy commission established; development of public policy agenda.~~

~~There is hereby created the “Higher Education Policy Commission”, hereinafter referred to as the “commission”. It is the intent of the Legislature that the commission be responsible to provide shared services in a cost-effective manner upon request by the state colleges and universities, the council, and the community and technical colleges; undertake certain statewide and regional initiatives as specifically designated in this code, including those related to the administration of grants and scholarships and including those in conjunction with the council; to review, confirm or approve certain actions undertaken by the governing boards, as delineated in this chapter; and develop and gain consensus around the public policy agenda for higher education and other statewide issues pursuant to section one-a, article one of this chapter under the following conditions:~~

~~(a) It is the responsibility of the commission to work collaboratively with the governing boards and the council to develop and gain consensus around the public policy agenda for higher education.~~

~~(b) It is the responsibility of the council to oversee the implementation of the public policy agenda for the institutions under its jurisdiction.~~

~~(c) All matters of governance not specifically assigned to the commission or council by law are the duty and responsibility of the governing boards.~~

§18B-1B-1 Office of Postsecondary Education established; development of public policy agenda.

There is hereby created the "Office of Postsecondary Education", hereinafter referred to as "OPE". It is the intent of the Legislature that the OPE (a) enhance access for West Virginians to high quality, low cost postsecondary educational opportunities; (b) provide maximum flexibility for individual institutions to operate; (c) maximize the stability of the legal environment for West Virginia higher education; (d) promote efficiency of operations for all institutions; (e) encourage cross-campus collaboration, and (f) undertake the duties specified in this code.

2. West Virginia Code §18B-1B-2 is hereby amended as follows:

~~§18B-1B-2. Composition of commission; terms and qualifications of members; vacancies; eligibility for reappointment; oath of office; removal from office.~~

~~(a) The commission is comprised of ten members, all of whom are entitled to vote. The membership of the commission is as follows:~~

~~(1) The Secretary of Education and the Arts, ex officio.~~

~~(2) The State Superintendent of Schools, ex officio;~~

~~(3) The chair of the West Virginia Council for Community and Technical College Education, ex officio.~~

~~(4) Four at-large members who are citizens of the state, appointed by the Governor, by and with the advice and consent of the Senate.~~

48

49 ~~(5) Three at-large members who are designated as higher education representatives,~~
50 ~~appointed by the Governor, by and with the advice and consent of the Senate; for each of the~~
51 ~~higher education representatives, the Governor shall choose from recommendations made by~~
52 ~~any state college and university or exempted school and the Governor may request additional~~
53 ~~recommendations from state colleges and universities or exempted schools if in the governor in~~
54 ~~his or her sole discretion determines that additional recommendations are necessary for~~
55 ~~appointments to the commission.~~

56

57 ~~(b) Each of the at-large members appointed by the Governor shall represent the public~~
58 ~~interest and shall be committed to the legislative intent and goals set forth in state law and~~
59 ~~policy.~~

60

61 ~~(c) The Governor may not appoint any person to be a member of the commission who is~~
62 ~~an officer, employee or member of the council or an advisory board of any state college or~~
63 ~~university or exempted school; an officer or member of any political party executive committee;~~
64 ~~the holder of any other public office or public employment under the government of this state or~~
65 ~~any of its political subdivisions; an appointee or employee of any governing board; or an~~
66 ~~immediate family member of any employee under the jurisdiction of the commission, the council~~
67 ~~or any governing board.~~

68

69 ~~(d) Of the seven, at-large members appointed by the Governor:~~

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71 ~~(1) No more than four may belong to the same political party;~~

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73 ~~(2) At least two shall be appointed from each congressional district; and~~

74

75 ~~(3) Effective July 1, 2008, no more than one member may serve from the same county.~~

76

77 ~~(e) The at-large members appointed by the Governor serve overlapping terms of four~~
78 ~~years.~~

79

80 ~~(f) The Governor shall appoint a member to fill any vacancy among the seven at-large~~
81 ~~members, by and with the advice and consent of the Senate. Any member appointed to fill a~~
82 ~~vacancy serves for the unexpired term of the vacating member. The Governor shall fill the~~
83 ~~vacancy within thirty days of the occurrence of the vacancy.~~

84

85 ~~(g) An at-large member appointed by the Governor may not serve more than two~~
86 ~~consecutive terms.~~

87

88 ~~(h) Before exercising any authority or performing any duties as a member of the~~
89 ~~commission, each member shall qualify as such by taking and subscribing to the oath of office~~
90 ~~prescribed by section five, article IV of the Constitution of West Virginia and the certificate~~
91 ~~thereof shall be filed with the Secretary of State.~~

92

93 ~~(i) A member of the commission appointed by the Governor may not be removed from~~
94 ~~office by the Governor except for official misconduct, incompetence, neglect of duty or gross~~
95 ~~immorality and then only in the manner prescribed by law for the removal of the state elective~~
96 ~~officers by the Governor.~~

97

98 **§18B-1B-2. Composition of OPE board of managers; terms and qualifications of**
99 **members; vacancies; eligibility for reappointment; oath of OPE; removal from office**

(a) The OPE shall be overseen and operated by a board of managers comprised of ten members. The governing boards of each of West Virginia's four-year public institutions of higher education shall each appoint one member of the board of managers, none of whom shall be the president of any such institution. Each member shall serve at the pleasure of their institution's governing board, and each member may be removed by the member's board of governors at any time for any reason or for no reason at all. Otherwise, no member shall be removed from the board except for official misconduct, incompetence, neglect of duty or gross immorality and then only in the manner prescribed by law for the removal of the state elective officers by the Governor. The three members appointed by the Exempted Schools (as defined in W. Va. Code §18B-1-2(17)) shall be entitled to vote on all matters, other than matters pertaining to academic programs, as specified in Section 4 below, at any of the State Colleges and Universities (as defined in W. Va. Code §18B-1-2(26). The seven members appointed by the State Colleges and Universities shall be entitled to vote on all matters, except that the board has no authority to make decisions related to the Exempted Schools.

(b) Before exercising any authority or performing any duties as a member of the board of managers, each member shall qualify as such by taking and subscribing to the oath of office prescribed by section five, article IV of the Constitution of West Virginia and the certificate thereof shall be filed with the Secretary of State.

3. West Virginia Code §18B-1B-3 is hereby amended as follows:

~~§18B-1B-3. Meetings and compensation.~~

~~(a) The commission shall meet as needed at the time and place specified by the call of the chairperson.~~

~~(b) The commission shall hold an annual meeting at the final, regularly scheduled meeting of each fiscal year for the purpose of electing officers. At the annual meeting, the~~

~~commission shall elect from its members appointed by the Governor a chairperson and other officers as it may consider necessary or desirable. All officers are elected from the citizen appointees. The chairperson and other officers are elected for a one-year term commencing on July 1, following the annual meeting and ending on June 30 of the following year. The chairperson of the commission may serve no more than four consecutive terms as chair.~~

~~(c) Members of the commission shall be reimbursed for actual and necessary expenses incident to the performance of their duties upon presentation of an itemized sworn statement thereof. The foregoing reimbursement for actual and necessary expenses shall be paid from appropriations made by the Legislature to the commission.~~

~~(d) A majority of the members constitutes a quorum for conducting the business of the commission.~~

§ 18B-1B-3. Meetings and compensation

(a) The board of managers shall meet quarterly at a time and place specified by the call of the chairperson or the director of the OPE. Otherwise, the director of the OPE or the chair of the board of managers may call an emergency meeting of the board of managers. The board of managers may appoint an executive committee of up to five members which may act on behalf of the board of managers between meetings of the full board.

(b) Members of OPE shall be reimbursed for actual and necessary expenses incident to the performance of their duties upon presentation of an itemized sworn statement thereof. The foregoing reimbursement for actual and necessary expenses shall be paid from appropriations made by the Legislature to OPE.

(c) A majority of the members constitutes a quorum for conducting the business

151 of OPE.

152 4. West Virginia Code §18B-1B-4 is amended as follows:

153 **~~§18B-1B-4. Powers and duties of Higher Education Policy Commission.~~**

154 ~~(a) The primary responsibility of the commission is to provide shared services in~~
155 ~~a cost-effective manner upon request to the state colleges and universities, the council,~~
156 ~~and the community and technical colleges; undertake certain statewide and regional~~
157 ~~initiatives as specifically designated in this chapter, including those related to the~~
158 ~~administration of grants and scholarships and including those in conjunction with the~~
159 ~~council; to review, confirm or approve certain actions undertaken by governing boards,~~
160 ~~as delineated in this chapter; and assist in the development of policy that will achieve the~~
161 ~~goals, objectives and priorities found in section one-a, article one and article one-d of~~
162 ~~this chapter. The commission shall exercise its authority and carry out its responsibilities~~
163 ~~in a manner that is consistent and not in conflict with the powers and duties assigned by~~
164 ~~law to the West Virginia Council for Community and Technical College Education and~~
165 ~~the powers and duties assigned to the governing boards. To that end, the commission~~
166 ~~has the following powers and duties relating to the governing boards under its~~
167 ~~jurisdiction:~~

168 ~~(1) Develop and advance the public policy agenda pursuant to article one-d of~~
169 ~~this chapter to address major challenges facing the state, including, but not limited to,~~
170 ~~the following:~~

171 ~~(A) The goals, objectives and priorities established in this chapter including~~
172 ~~specifically those goals, objectives and priorities pertaining to the compacts created~~
173 ~~pursuant to section seven, article one-d of this chapter; and~~

~~(B) Development of the master plan described in section five, article one-d of this chapter for the purpose of accomplishing the mandates of this section;~~

~~(2) Develop, oversee and advance the promulgation and implementation of a financing rule for state institutions of higher education under its jurisdiction except the exempted schools. The rule shall meet the following criteria:~~

~~(A) Provide for an adequate level of educational and general funding for institutions pursuant to section five, article one-a of this chapter;~~

~~(B) Serve to maintain institutional assets, including, but not limited to, human and physical resources and eliminating deferred maintenance; and~~

~~(C) Invest and provide incentives for achieving the priority goals in the public policy agenda, including, but not limited to, those found in section one-a, article one and article one-d of this chapter;~~

~~(3) In collaboration with the council and the governing boards:~~

~~(A) Building public consensus around and sustaining attention to a long-range public policy agenda. In developing the agenda, the commission and council shall seek input from the Legislature, the Governor, the governing boards, and specifically from the State Board of Education and local school districts in order to create the necessary linkages to assure smooth, effective and seamless movement of students through the public education and post-secondary education systems and to ensure that the needs of public school courses and programs can be fulfilled by the graduates produced and the programs offered;~~

~~(B) Assisting governing boards to carry out their duty effectively to govern the individual institutions of higher education;~~

197 ~~(4) Except the exempted schools, review and comment on each compact for the~~
198 ~~governing boards under its jurisdiction, and final confirmation of each compact;~~

199 ~~(5) Review and confirm the bi-annual updates of the institutional compacts,~~
200 ~~except the exempted schools;~~

201 ~~(6) Serve as a point of contact to state policymakers:~~

202 ~~(A) The Governor for the public policy agenda; and~~

203 ~~(B) The Legislature by maintaining a close working relationship with the~~
204 ~~legislative leadership and the Legislative Oversight Commission on Education~~
205 ~~Accountability.~~

206 ~~(7) Upon request, provide shared services to a state institution of higher~~
207 ~~education;~~

208 ~~(8) Administer scholarship and grant programs as provided for in this code;~~

209 ~~(9) Establish and implement the benchmarks and performance indicators for~~
210 ~~state colleges and universities necessary to measure institutional progress in achieving~~
211 ~~state policy priorities and institutional missions pursuant to section seven, article one-d~~
212 ~~of this chapter;~~

213 ~~(10) Establish a formal process for recommending capital investment needs and~~
214 ~~for determining priorities for state colleges and universities for these investments for~~
215 ~~consideration by the Governor and the Legislature as part of the appropriation request~~
216 ~~process pursuant to article nineteen of this chapter;~~

217 ~~(11) Except the exempted schools, develop standards and evaluate governing~~
218 ~~board requests for capital project financing in accordance with article nineteen of this~~

219 chapter;

220 ~~(12) Except the exempted schools, ensure that governing boards manage capital~~
221 ~~projects and facilities needs effectively, including review and approval of capital projects,~~
222 ~~in accordance with article nineteen of this chapter;~~

223 ~~(13) Acquire legal services as considered necessary, including representation of~~
224 ~~the commission, the governing boards, employees and officers before any court or~~
225 ~~administrative body, notwithstanding any other provision of this code to the contrary. The~~
226 ~~counsel may be employed either on a salaried basis or on a reasonable fee basis. In~~
227 ~~addition, the commission may, but is not required to, call upon the Attorney General for~~
228 ~~legal assistance and representation as provided by law;~~

229 ~~(14) Employ a Chancellor for Higher Education pursuant to section five of this~~
230 ~~article;~~

231 ~~(15) Employ other staff as necessary and appropriate to carry out the duties and~~
232 ~~responsibilities of the commission and the council, in accordance with article four of this~~
233 ~~chapter;~~

234 ~~(16) Provide suitable offices in Kanawha County for the chancellor, vice~~
235 ~~chancellors and other staff;~~

236 ~~(17) Advise and confirm in the appointment of the presidents of the institutions of~~
237 ~~higher education under its jurisdiction pursuant to section six of this article, except the~~
238 ~~exempted schools. The role of the commission in confirming an institutional president is~~
239 ~~to assure through personal interview that the person selected understands and is~~
240 ~~committed to achieving the goals, objectives and priorities set forth in the compact, in~~
241 ~~section one-a, article one and article one-d of this chapter;~~

~~(18) Approve the total compensation package from all sources for presidents of institutions under its jurisdiction, except the exempted schools, as proposed by the governing boards. The governing boards, except the exempted schools, must obtain approval from the commission of the total compensation package both when institutional presidents are employed initially and afterward when any change is made in the amount of the total compensation package: Provided, That the Commission will receive notice, but need not approve or confirm, an increase in the compensation of an institutional president that is exactly in the ratio of compensation increases allocated to all institutional employees and approved by the governing board to expressly include the president;~~

~~(19) Assist and facilitate the work of the institutions to implement the policy of the state to assure that parents and students have sufficient information at the earliest possible age on which to base academic decisions about what is required for students to be successful in college, other post-secondary education and careers related, as far as possible, to results from current assessment tools in use in West Virginia;~~

~~(20) Approve and implement a uniform standard jointly with the council to determine which students shall be placed in remedial or developmental courses. The standard shall be aligned with college admission tests and assessment tools used in West Virginia and shall be applied uniformly by the governing boards. The chancellors shall develop a clear, concise explanation of the standard which they shall communicate to the State Board of Education and the state superintendent of Schools;~~

~~(21) Jointly with the council, develop and implement an oversight plan to manage systemwide technology except the exempted schools, including, but not limited to, the following:~~

266 ~~(A) Expanding distance learning and technology networks to enhance teaching~~
267 ~~and learning, promote access to quality educational offerings with minimum duplication~~
268 ~~of effort; and~~

269 ~~(B) Increasing the delivery of instruction to nontraditional students, to provide~~
270 ~~services to business and industry and increase the management capabilities of the~~
271 ~~higher education system.~~

272 ~~(C) Notwithstanding any other provision of law or this code to the contrary, the~~
273 ~~council, commission and governing boards are not subject to the jurisdiction of the Chief~~
274 ~~Technology Officer for any purpose;~~

275 ~~(22) Establish and implement policies and procedures to ensure that a student~~
276 ~~may transfer and apply toward the requirements for a bachelor's degree the maximum~~
277 ~~number of credits earned at any regionally accredited in-state or out-of-state community~~
278 ~~and technical college with as few requirements to repeat courses or to incur additional~~
279 ~~costs as are consistent with sound academic policy;~~

280 ~~(23) Establish and implement policies and procedures to ensure that a student~~
281 ~~may transfer and apply toward the requirements for any degree the maximum number of~~
282 ~~credits earned at any regionally accredited in-state or out-of-state higher education~~
283 ~~institution with as few requirements to repeat courses or to incur additional costs as are~~
284 ~~consistent with sound academic policy;~~

285 ~~(24) Establish and implement policies and procedures to ensure that a student~~
286 ~~may transfer and apply toward the requirements for a master's degree the maximum~~
287 ~~number of credits earned at any regionally accredited in-state or out-of-state higher~~
288 ~~education institution with as few requirements to repeat courses or to incur additional~~

289 ~~costs as are consistent with sound academic policy;~~

290 ~~(25) Establish and implement policies and programs, in cooperation with the~~
291 ~~council and the governing boards, through which a student who has gained knowledge~~
292 ~~and skills through employment, participation in education and training at vocational~~
293 ~~schools or other education institutions, or Internet-based education programs, may~~
294 ~~demonstrate by competency-based assessment that he or she has the necessary~~
295 ~~knowledge and skills to be granted academic credit or advanced placement standing~~
296 ~~toward the requirements of an associate's degree or a bachelor's degree at a state~~
297 ~~institution of higher education;~~

298 ~~(26) Seek out and attend regional, national and international meetings and~~
299 ~~forums on education and workforce development-related topics as, in the commission's~~
300 ~~discretion, are critical for the performance of their duties as members, for the purpose of~~
301 ~~keeping abreast of education trends and policies to aid it in developing the policies for~~
302 ~~this state to meet the established education goals, objectives and priorities pursuant to~~
303 ~~section one-a, article one and article one-d of this chapter;~~

304 ~~(27) Promulgate and implement a rule for higher education governing boards and~~
305 ~~institutions, except the exempted schools, to follow when considering capital projects~~
306 ~~pursuant to article nineteen of this chapter, which rule shall provide for appropriate~~
307 ~~deference to the value judgments of governing boards under the jurisdiction of the~~
308 ~~commission;~~

309 ~~(28) Submit to the appropriate agencies of the executive and legislative branches~~
310 ~~of state government an appropriation request that reflects recommended appropriations~~
311 ~~for the commission and the governing boards under its jurisdiction. The commission~~
312 ~~shall submit as part of its appropriation request the separate recommended~~

313 ~~appropriation request it received from the council, both for the council and for the~~
314 ~~governing boards under the council's jurisdiction, including the exempted schools. The~~
315 ~~commission annually shall submit the proposed allocations based on each institution's~~
316 ~~progress toward meeting the goals of its compact;~~

317 ~~(29) The commission may assess institutions under its jurisdiction, including the~~
318 ~~exempted schools, for the payment of expenses of the commission or for the funding of~~
319 ~~statewide higher education services, obligations or initiatives related to the goals set~~
320 ~~forth for the provision of public higher education in the state: Provided, That the~~
321 ~~commission may not assess institutions pursuant to this subdivision on or after July 1,~~
322 ~~2018;~~

323 ~~(30) Promulgate rules allocating reimbursement of appropriations, if made~~
324 ~~available by the Legislature, to governing boards for qualifying noncapital expenditures~~
325 ~~incurred in providing services to students with physical, learning or severe sensory~~
326 ~~disabilities;~~

327 ~~(31) Pursuant to article three-a, chapter twenty-nine-a of this code and section~~
328 ~~six, article one of this chapter, promulgate rules necessary or expedient to fulfill the~~
329 ~~purposes of this chapter;~~

330 ~~(32) Determine when a joint rule among the governing boards under its~~
331 ~~jurisdiction is necessary or required by law and, in those instances, in consultation with~~
332 ~~the governing boards under its jurisdiction, promulgate the joint rule;~~

333 ~~(33) Promulgate and implement a rule jointly with the council whereby course~~
334 ~~credit earned at a community and technical college transfers for program credit at any~~
335 ~~other state institution of higher education and is not limited to fulfilling a general~~

336 education requirement;

337 ~~(34) By October 1, 2011, promulgate a rule pursuant to section one, article ten of~~
338 ~~this chapter, establishing tuition and fee policy for all governing boards under the~~
339 ~~jurisdiction of the commission, except the exempted schools. The rule shall include, but~~
340 ~~is not limited to, the following:~~

341 ~~(A) Differences among institutional missions;~~

342 ~~(B) Strategies for promoting student access;~~

343 ~~(C) Consideration of charges to out-of-state students; and~~

344 ~~(D) Such other policies as the commission and council consider appropriate;~~

345 ~~(35) Assist governing boards in actions to implement general disease awareness~~
346 ~~initiatives to educate parents and students, particularly dormitory residents, about~~
347 ~~meningococcal meningitis; the potentially life-threatening dangers of contracting the~~
348 ~~infection; behaviors and activities that can increase risks; measures that can be taken to~~
349 ~~prevent contact or infection; and potential benefits of vaccination. The commission shall~~
350 ~~encourage governing boards that provide medical care to students to provide access to~~
351 ~~the vaccine for those who wish to receive it; and~~

352 ~~(36) Notwithstanding any other provision of this code to the contrary sell, lease,~~
353 ~~convey or otherwise dispose of all or part of any real property that it owns, in accordance~~
354 ~~with article nineteen of this chapter.~~

355 ~~(37) Policy analysis and research focused on issues affecting institutions of~~
356 ~~higher education generally or a geographical region thereof;~~

357 ~~(38) Development and approval of institutional mission definitions except the~~

~~exempted schools, including use of incentive funds to influence institutional behavior in ways that are consistent with public priorities;~~

~~(39) Academic program review and approval for governing boards under its jurisdiction. The review and approval includes use of institutional missions as a template to judge the appropriateness of both new and existing programs and the authority to implement needed changes.~~

~~(A) The commission's authority to review and approve academic programs for the exempted schools is limited to programs that are proposed to be offered at a new location not presently served by that institution: Provided, That West Virginia University and the West Virginia University Institute of Technology are subject to the commission's authority as provided in section two, article one-c of this chapter;~~

~~(B) In reviewing and approving academic programs, the commission shall focus on the following policy concerns:~~

~~(1) New programs should not be implemented which change the institutional mission, unless the institution also receives approval for expanding the institutional mission;~~

~~(2) New programs which will require significant additional expense investments for implementation should not be implemented unless the institution demonstrates that:~~

~~(i) The expenses will be addressed by effective reallocations of existing institutional resources; or~~

~~(ii) The expenses can be legitimately spread out over future years and will be covered by reasonably anticipated additional net revenues from new enrollments;~~

~~(3) A new undergraduate program which is significantly similar to an existing program already in the geographic service area should not be implemented unless the institution requesting the new program demonstrates a compelling need in the service area that is not being met by the existing program: Provided, That the academic programs of the exempted schools are not to be taken into consideration except as it relates to academic programs offered at West Virginia University in Beckley and West Virginia University Institute of Technology in Beckley.~~

~~(C) The commission shall approve or disapprove proposed academic degree programs in those instances where approval is required as soon as practicable. The commission shall maintain by rule a format model by which a new program approval shall be requested by an institution. When a request for approval of a new program is submitted to the commission, the chancellor shall provide notice within two weeks as to whether the submission meets the required format, and if it does not the chancellor shall identify each specific deficiency and return the request to the institution. The institution may re-file the request for approval with the commission to address any identified deficiencies. Within thirty days after the chancellor's confirmation that the request meets the required format, the commission shall either approve or disapprove the request for the new program. The commission may not withhold approval unreasonably.~~

~~(40) Distribution of funds appropriated to the commission, including incentive and performance-based funds;~~

~~(41) Administration of state and federal student aid programs under the supervision of the vice chancellor for administration, including promulgation of rules necessary to administer those programs;~~

~~(42) Serving as the agent to receive and disburse public funds when a~~

404 ~~governmental entity requires designation of a statewide higher education agency for this~~
405 ~~purpose;~~

406 ~~(43) Developing and distributing information, assessment, accountability and~~
407 ~~personnel systems for state colleges and universities, including maintaining statewide~~
408 ~~data systems that facilitate long-term planning and accurate measurement of strategic~~
409 ~~outcomes and performance indicators;~~

410 ~~(44) Jointly with the council, promulgating and implementing rules for licensing~~
411 ~~and oversight for both public and private degree-granting and nondegree-granting~~
412 ~~institutions that provide post-secondary education courses or programs in the state. The~~
413 ~~council has authority and responsibility for approval of all post-secondary courses or~~
414 ~~programs providing community and technical college education as defined in section~~
415 ~~two, article one of this chapter;~~

416 ~~(45) Developing, facilitating, and overseeing statewide and regional projects and~~
417 ~~initiatives related to providing post-secondary education at the baccalaureate level and~~
418 ~~above such as those using funds from federal categorical programs or those using~~
419 ~~incentive and performance-based funds from any source;—~~

420 ~~(46) (A) For all governing boards under its jurisdiction, except for the exempted~~
421 ~~schools, the commission shall review institutional operating budgets, review and approve~~
422 ~~capital budgets, and distribute incentive and performance-based funds;~~

423 ~~(B) For the governing boards of, the exempted schools, the commission shall~~
424 ~~distribute incentive and performance-based funds and may review and comment upon~~
425 ~~the institutional operating budgets and capital budgets. The commission's comments, if~~
426 ~~any, shall be made part of the governing board's minute record and shall be filed with~~

427 ~~the Legislative Oversight Commission on Education Accountability;~~

428 ~~(47) May provide information, research, and recommendations to state colleges~~
429 ~~and universities relating to programs and vocations with employment rates greater than~~
430 ~~ninety percent within six months post-graduation; and~~

431 ~~(48) May provide information, research and recommendations to state colleges~~
432 ~~and universities on coordinating with the West Virginia State Board of Education about~~
433 ~~complimentary programs.~~

434 ~~(b) In addition to the powers and duties provided in subsections (a) and (b) of this~~
435 ~~section and any other powers and duties assigned to it by law, the commission has other~~
436 ~~powers and duties necessary or expedient to accomplish the purposes of this~~
437 ~~article: Provided, That the provisions of this subsection shall not be construed to shift~~
438 ~~management authority from the governing boards to the commission.~~

439 ~~(c) The commission may withdraw specific powers of a governing board under its~~
440 ~~jurisdiction for a period not to exceed two years, if the commission determines that any~~
441 ~~of the following conditions exist:~~

442 ~~(1) The commission has received information, substantiated by independent~~
443 ~~audit, of significant mismanagement or failure to carry out the powers and duties of the~~
444 ~~governing board according to state law; or~~

445 ~~(2) Other circumstances which, in the view of the commission, severely limit the~~
446 ~~capacity of the governing board to exercise its powers or carry out its duties and~~
447 ~~responsibilities.~~

448 ~~The commission may not withdraw specific powers for a period exceeding two~~
449 ~~years. During the withdrawal period, the commission shall take all steps necessary to~~

450 ~~reestablish sound, stable and responsible institutional governance.~~

451 ~~(d) The Higher Education Policy Commission shall examine the question of~~
452 ~~general revenue appropriations to individual higher education institutions per student,~~
453 ~~and per credit hour, and by other relevant measures at all higher education institutions,~~
454 ~~including four-year baccalaureate institutions and the community and technical colleges,~~
455 ~~and on or before January 1, 2018, the commission shall deliver its report to the Joint~~
456 ~~Committee on Government and Finance and the Legislative Oversight Commission on~~
457 ~~Education Accountability. This report shall include a recommendation to the Legislature~~
458 ~~on a formula for the allocation of general revenue to be appropriated to such institutions~~
459 ~~that provides for ratable funding across all four-year institutions and community and~~
460 ~~technical colleges on a ratable basis, by enrolled student, by credit hour or by other~~
461 ~~relevant measures. On such basis, the commission shall make a recommendation to the~~
462 ~~Legislature as to the amounts that each such institution should have appropriated to it in~~
463 ~~the general revenue budget for fiscal year 2019, based upon the total general revenue~~
464 ~~appropriations that such institutions receive in aggregate in the enacted budget for fiscal~~
465 ~~year 2018.~~

466 **§ 18B-1B-4. Powers and duties of Office of Postsecondary Education**

467 (a) The sole responsibilities of OPE are to (i) provide shared services in a cost-effective
468 manner upon request to the state colleges and universities and the community and
469 technical colleges and (ii) coordinate academic programs at State Colleges and
470 Universities. To that end, OPE has the following powers and duties relating to the
471 governing boards under its jurisdiction:

472 (1) Upon request, provide shared services to a state institution of higher education,
473 including:

- 474 (A) Financial aid training for high school counselors and other citizens providing financial
475 aid advice to high school students;
- 476 (B) Administration of reciprocity agreements with higher education institutions and
477 agencies in other states;
- 478 (C) Support for college completion initiatives;
- 479 (D) Online curriculum quality improvement;
- 480 (E) Institutional data management and reporting, including response to legislative
481 requests for data;
- 482 (F) Health science education and workforce development initiatives, including the Rural
483 Health Initiative and the Rural Health Residency Program;
- 484 (G) Support for the GEAR UP initiative;
- 485 (H) Support for veterans education and training programs;
- 486 (I) Support for College Foundation of West Virginia student recruitment and support
487 initiatives;
- 488 (J) Joint purchasing initiatives;
- 489 (K) Preparation of legislative fiscal notes;
- 490 (L) Bond administration;
- 491 (M) Preparation of budgets for the operation of OPE;
- 492 (N) Preparation of audits;
- 493 (O) Implementation of OASIS system;

- 494 (P) Administration of employee benefits system;
- 495 (Q) Software support for human resource functions;
- 496 (R) Technical assistance for statutorily required classification and compensation
497 systems;
- 498 (S) Information technology systems;
- 499 (T) Clearinghouse for external (federal and private) grants;
- 500 (U) Training and development initiatives for members of the governing boards at West
501 Virginia's four-year public institutions of higher education; and
- 502 (V) Such other services as the board of managers may determine are necessary for
503 OPE to achieve its mission as set forth in Section 1.
- 504 (2) Upon request, provide any of the shared services set forth in section (a)(1)(A)-(V)
505 above to private institutions in the State in accordance with a fee structure to be
506 established annually by the board of managers.
- 507 (3) Acquire legal services as considered necessary, including representation of
508 OPE, the governing boards, employees and Officers before any court or administrative
509 body, notwithstanding any other provision of this code to the contrary. The counsel may
510 be employed either on a salaried basis or on a reasonable fee basis. In addition, OPE
511 may, but is not required to, call upon the Attorney General for legal assistance and
512 representation as provided by law;
- 513 (4) Employ a director of the Office of Postsecondary Education, subject to the approval
514 of the Governor, pursuant to section five of this article;

515 (5) Employ other staff as necessary and appropriate to carry out the duties and
516 responsibilities of OPE;

517 (6) Provide suitable offices in Kanawha County for the director and other staff;

518 (7) OPE may assess institutions under its jurisdiction for the payment of expenses of
519 OPE or for the funding of statewide higher education services, obligations or initiatives
520 related to the goals set forth for the provision of public higher education in the state;

521 (8) Promulgate rules necessary or expedient to fulfill the purposes of this chapter;

522 (9) Notwithstanding any other provision of this code to the contrary sell, lease, convey or
523 otherwise dispose of all or part of any real property that it owns, in accordance with
524 article nineteen of this chapter;

525 (10) Administer state and federal student aid programs, including promulgation of rules
526 necessary to administer those programs;

527 (11) Serving as the agent to receive and disburse public funds when a governmental
528 entity requires designation of a statewide higher education agency for this purpose;

529 (12) Maintain procedures for the approval of a designated receiver to provide for the
530 maintenance of student records of postsecondary educational institutions which cease to
531 operate;

532 (13) Develop standards by which postsecondary institutions are initially licensed to
533 operate and to provide for the periodic renewals of any such license; and

534 (14) Review and approve academic programs for governing boards at State Colleges
535 and Universities, but not at Exempt Schools or at Shepherd University. The review and
536 approval includes use of institutional missions as a template to judge the

537 appropriateness of both new and existing programs and the authority to implement
538 needed changes.

539 (A) The OPE's authority to review and approve academic programs for the
540 exempted schools and Shepherd University is limited to programs that are proposed to
541 be offered at a new location not presently served by that institution: Provided, That West
542 Virginia University and the West Virginia University Institute of Technology are subject to
543 the commission's authority as provided in section two, article one-c of this chapter;

544 (B) In reviewing and approving academic programs, OPE shall focus on the
545 following policy concerns:

546 (1) New programs should not be implemented which change the institutional
547 mission, unless the institution also receives approval for expanding the institutional
548 mission;

549 (2) New programs which will require significant additional expense investments for
550 implementation should not be implemented unless the institution demonstrates that:

551 (i) The expenses will be addressed by effective reallocations of existing institutional
552 resources; or

553 (ii) The expenses can be legitimately spread out over future years and will be
554 covered by reasonably anticipated additional net revenues from new enrollments;

555 (3) A new undergraduate program which is significantly similar to an existing
556 program already in the geographic service area should not be implemented unless the
557 institution requesting the new program demonstrates a compelling need in the service
558 area that is not being met by the existing program.

559 (C) OPE shall approve or disapprove proposed academic degree programs in those
560 instances where approval is required as soon as practicable. OPE shall maintain by rule
561 a format model by which a new program approval shall be requested by an institution.
562 When a request for approval of a new program is submitted to OPE, the director shall
563 provide notice within two weeks as to whether the submission meets the required format,
564 and if it does not the director shall identify each specific deficiency and return the
565 request to the institution. The institution may re-file the request for approval with OPE to
566 address any identified deficiencies. Within thirty days after the Director's confirmation
567 that the request meets the required format, OPE shall either approve or disapprove the
568 request for the new program. OPE may not withhold approval unreasonably.

569 (15) Establish and implement policies and procedures to ensure that a student may
570 transfer and apply toward the requirements for a bachelor's degree the maximum
571 number of credits earned at any regionally accredited in-state or out-of-state community
572 and technical college with as few requirements to repeat courses or to incur additional
573 costs as are consistent with sound academic policy;

574 (16) Establish and implement policies and procedures to ensure that a student may
575 transfer and apply toward the requirements for any degree the maximum number of
576 credits earned at any regionally accredited in-state or out-of-state higher education
577 institution with as few requirements to repeat courses or to incur additional costs as are
578 consistent with sound academic policy;

579 (17) Establish and implement policies and procedures to ensure that a student may
580 transfer and apply toward the requirements for a master's degree the maximum number
581 of credits earned at any regionally accredited in-state or out-of-state higher education
582 institution with as few requirements to repeat courses or to incur additional costs as are

583 consistent with sound academic policy.

584 (b) In addition to the powers and duties provided in subsection (a) of this section and any
585 other powers and duties assigned to it by law, OPE has other powers and duties
586 necessary or expedient to accomplish the purposes of this article, *provided*, that the
587 provisions of this subsection shall not be construed to shift authority from the governing
588 boards to OPE. Unless expressly authorized by this subsection to be a responsibility of
589 OPE, all other responsibility for governance and operation of the public institutions of
590 higher education shall remain with the governing boards.

591 5. West Virginia Code §18B-1B-5 is hereby amended as follows:

592 **~~§18B-1B-5. Employment of Chancellor for Higher Education; office; powers and~~**
593 **~~duties generally; employment of Vice Chancellors and other staff.~~**

594 ~~(a) The commission, created by section one of this article, shall employ a Chancellor for~~
595 ~~Higher Education who is the Chief Executive Officer of the Commission and who serves~~
596 ~~at its will and pleasure.~~

597 ~~(b) The commission shall set the qualifications for the position of Chancellor and, when a~~
598 ~~vacancy occurs, shall conduct a thorough nationwide search for qualified candidates. A~~
599 ~~qualified candidate is one who meets at least the following criteria:~~

600 ~~(1) Possesses an excellent academic and administrative background;~~

601 ~~(2) Demonstrates strong communication skills;~~

602 ~~(3) Has significant experience and an established national reputation as a professional in~~
603 ~~the field of higher education;~~

604 ~~(4) Is free of institutional or regional biases; and~~

605 ~~(5) Holds or retains no other administrative position within a system of higher education~~
606 ~~while employed as chancellor.~~

607 ~~(c) The commission shall conduct written performance evaluations of the chancellor~~
608 ~~annually and may offer the chancellor a contract not to exceed three years. At the end of~~
609 ~~each contract period, the commission shall review the evaluations and make a~~
610 ~~determination by vote of its members on continuing employment and compensation~~
611 ~~level.~~

612 ~~(d) When filling a vacancy in the position of chancellor, the commission shall enter into~~
613 ~~an initial employment contract for one year with the candidate selected. At the end of the~~
614 ~~initial contract period, and each contract period thereafter, the commission shall review~~
615 ~~the evaluations and make a determination by vote of its members on continuing~~
616 ~~employment and compensation level for the chancellor.~~

617 ~~(e) The commission sets the chancellor's salary. The salary may not exceed by more~~
618 ~~than twenty percent the average annual salary of chief executive officers of state~~
619 ~~systems of higher education in the states that comprise the membership of the Southern~~
620 ~~Regional Education Board.~~

621 ~~(f) The commission may employ a Vice Chancellor for Health Sciences who serves at~~
622 ~~the will and pleasure of the commission. The Vice Chancellor for Health Sciences shall~~
623 ~~coordinate the West Virginia University School of Medicine, the Marshall University~~
624 ~~School of Medicine and the West Virginia School of Osteopathic Medicine and also shall~~
625 ~~provide assistance to the governing boards on matters related to medical education and~~
626 ~~health sciences. The Vice Chancellor for Health Sciences shall perform all duties~~
627 ~~assigned by the chancellor, the commission and state law. In the case of a vacancy in~~
628 ~~the office of Vice Chancellor of Health Sciences, the duties assigned to this office by law~~

629 ~~are the responsibility of the chancellor or a designee.~~

630 ~~(g) The commission shall employ a Vice Chancellor for Administration pursuant to~~
631 ~~section two, article four of this chapter.~~

632 ~~(h) The commission may employ a Vice Chancellor for State Colleges who serves at the~~
633 ~~will and pleasure of the commission. At a minimum, the Vice Chancellor for State~~
634 ~~Colleges shall perform the following duties:~~

635 ~~(1) Provide assistance to the commission, the chancellor and the state colleges on~~
636 ~~matters related to or of interest and concern to these institutions;~~

637 ~~(2) Advise, assist and consult regularly with the presidents and governing boards of each~~
638 ~~state college;~~

639 ~~(3) Serve as an advocate and spokesperson for the state colleges to represent them and~~
640 ~~to make their interests, views and issues known to the chancellor, the commission and~~
641 ~~governmental agencies;~~

642 ~~(4) Perform all duties assigned by the chancellor, the commission and state law.~~

643 ~~In addition, the Vice Chancellor for State Colleges shall provide staff assistance to the~~
644 ~~presidents and governing boards to the extent practicable.~~

645 ~~(i) On behalf of the commission, the chancellor may enter into agreements with any state~~
646 ~~agency or political subdivision of the state, any state institution of higher education or~~
647 ~~any other person or entity to enlist staff assistance to implement the powers and duties~~
648 ~~assigned by the commission or by state law.~~

649 ~~(j) The chancellor is responsible for the daily operations of the commission and has the~~
650 ~~following responsibilities relating to the commission and the governing boards under its~~

651 jurisdiction:

652 ~~(1) To carry out policy and program directives of the commission;~~

653 ~~(2) To develop and submit annual reports on the implementation plan to achieve the~~
654 ~~goals and objectives set forth in section one-a, article one and article one-d of this~~
655 ~~chapter, and in the compacts;~~

656 ~~(3) To prepare and submit to the commission for its approval the proposed budget of the~~
657 ~~commission including the offices of the chancellor and the vice chancellors;~~

658 ~~(4) To assist the governing boards in developing rules, subject to the provisions of~~
659 ~~section six, article one of this chapter. Nothing in this chapter requires the rules of the~~
660 ~~governing boards to be filed pursuant to the rule-making procedures provided in article~~
661 ~~three-a, chapter twenty-nine-a of this code. The commission and the council, either~~
662 ~~separately or jointly as appropriate, are responsible for ensuring that any policy which is~~
663 ~~required to be uniform across the institutions is applied in a uniform manner;~~

664 ~~(5) To consult with institutions on human relations policies and rules;~~

665 ~~(6) To perform all other duties and responsibilities assigned by the commission or by~~
666 ~~state law.~~

667 ~~(k) The chancellor shall be reimbursed for all actual and necessary expenses incurred in~~
668 ~~the performance of all assigned duties and responsibilities.~~

669 ~~(l) The chancellor, with the commission, advises the Legislature on matters of higher~~
670 ~~education in West Virginia. The chancellor shall work closely with the Legislative~~
671 ~~Oversight Commission on Education Accountability and with the elected leadership of~~
672 ~~the state to ensure that they are fully informed about higher education issues and that~~

673 ~~the commission fully understands the goals, objectives and priorities for higher education~~
674 ~~that the Legislature has established by law.~~

675 ~~(m) The chancellor may design and develop for consideration by the commission new~~
676 ~~statewide or region-wide initiatives in accordance with the goals set forth in section one-~~
677 ~~a, article one and article one-d of this chapter, and the public policy agenda articulated~~
678 ~~by the commission. In those instances where the initiatives to be proposed have a direct~~
679 ~~and specific impact or connection to community and technical college education as well~~
680 ~~as to baccalaureate and graduate education, the Chancellor for Higher Education and~~
681 ~~the Chancellor for Community and Technical College Education shall design and~~
682 ~~develop the initiatives jointly for consideration by the commission and the council.~~

683 ~~(n) To further the goals of cooperation and coordination between the commission and~~
684 ~~the State Board of Education, the chancellor serves as an ex officio, nonvoting member~~
685 ~~of the state board. The chancellor shall work closely with members of the State Board of~~
686 ~~Education and with the State Superintendent of Schools to assure that the following~~
687 ~~goals are met:~~

688 ~~(1) Development and implementation of a seamless kindergarten-through-college~~
689 ~~system of education; and~~

690 ~~(2) Appropriate coordination of missions and programs.~~

691 **§ 18B-1B-5. Employment of Director of OPE; powers and duties generally**

692 (a) OPE, created by section one of this article, shall employ a Director who is the
693 chief executive officer of OPE and who serves at the will and pleasure of the board of
694 managers; provided, however, the Director's employment shall be subject to the
695 approval by the Governor.

696 (b) The board of managers shall set the qualifications for the position of Director
697 and, when a vacancy occurs, shall conduct a thorough search for qualified candidates.

698 (c) The board of managers shall conduct written performance evaluations of the
699 Director annually and may offer the Director a contract not to exceed three years. At the
700 end of each contract period, the board shall review the evaluations and make a
701 determination by vote of its members on continuing employment and compensation
702 level.

703 (d) The board of managers shall set the director's salary.

704 (e) On behalf of OPE, the director may enter into agreements with any state
705 agency or political subdivision of the state, any state institution of higher education or
706 any other person or entity to enlist staff assistance to implement the powers and duties
707 assigned by OPE or by state law.

708 (f) The director is responsible for the daily operations of OPE and has the
709 following responsibilities relating to OPE and the governing boards under its jurisdiction:

710 (1) To carry out policy and program directives of OPE;

711 (2) To develop and submit annual reports on the implementation plan to achieve
712 the goals and objectives set forth in section one-a, article one and article one-d of this
713 chapter;

714 (3) To prepare and submit to OPE for its approval the proposed budget of OPE;

715 (4) To perform all other duties and responsibilities assigned by OPE or by state
716 law.

717 (g) The director shall be reimbursed for all actual and necessary expenses

718 incurred in the performance of all assigned duties and responsibilities.

719 (h) To further the goals of cooperation and coordination between OPE and the
720 State Board of Education, the director serves as an ex officio, nonvoting member of the
721 state board. The director shall work closely with members of the State Board of
722 Education and with the State Superintendent of Schools to assure that the following
723 goals are met:

724 (1) Development and implementation of a seamless kindergarten-through-college
725 system of education; and

726 (2) Appropriate coordination of missions and programs.

727 6. West Virginia Code §18B-1B-6 is hereby amended as follows:

728 **~~§18B-1B-6. Appointment of institutional presidents; evaluation.~~**

729 ~~(a) Appointment of institutional presidents. — Appointment of presidents of the state~~
730 ~~institutions of higher education, except the exempted schools, shall be made as follows:~~

731 ~~(1) The initial contract term for a president may not exceed two years. At the end of the~~
732 ~~initial contract period, and subject to the provisions of subsection (c) of this section, the~~
733 ~~governing board may offer the president a contract of longer duration, but not to exceed~~
734 ~~five years.~~

735 ~~(2) The president of a state institution of higher education serves at the will and pleasure~~
736 ~~of the appointing governing board.~~

737 ~~(3) Subject to the confirmation of the commission, the governing boards of the following~~
738 ~~institutions, appoint a president: Bluefield State College, Concord University, Fairmont~~
739 ~~State University, Glenville State College, Shepherd University, West Liberty University~~

~~and West Virginia State University. The exempted schools may appoint a president without the confirmation or approval of the Commission.~~

~~(4) Subject to the approval of the council, the governing board of the community and technical college appoints a president for Blue Ridge Community and Technical College, Bridge Valley Community and Technical College, Eastern West Virginia Community and Technical College, Mountwest Community and Technical College, New River Community and Technical College, Pierpont Community and Technical College, Southern West Virginia Community and Technical College, West Virginia Northern Community and Technical College and West Virginia University at Parkersburg.~~

~~(b) Other appointments. — The President of West Virginia University appoints a campus president to be the administrative head of Potomac State College of West Virginia University and a campus president to be the administrative head of West Virginia University Institute of Technology.~~

~~(c) Evaluation of presidents. —~~

~~(1) The appointing governing board shall conduct written performance evaluations of the institution's president. Evaluations shall be done at the end of the initial contract period and in every third year of employment as president thereafter, recognizing unique characteristics of the institution and using institutional personnel, boards of advisors as appropriate, staff of the appropriate governing board and persons knowledgeable in higher education matters who are not otherwise employed by a governing board. A part of the evaluation shall be a determination of the success of the institution in meeting the requirements of its institutional compact and in achieving the goals, objectives and priorities established in articles one and one-d of this chapter.~~

~~(2) After reviewing the evaluations, the governing board shall make a determination by majority vote of its members on continuing employment and the compensation level for the president in accordance with subsection (a) of this section.~~

~~(d) The legislative rules of the commission and council promulgated in accordance with section six, article one of this chapter and article three-a, chapter twenty-nine-a of this code which are in effect on January 1, 2014, continue in effect unless amended or repealed. The rules provide guidance for the governing boards, but are not applicable to the exempted schools, in filling vacancies in the office of president in accordance with this chapter and shall include, but are not limited to, clarifying the powers, duties and roles of the governing boards, commission, council and chancellors in the presidential appointment process.~~

7. West Virginia Code §18-1B-7 is hereby amended as follows:

~~§18B-1B-7. Student mental health policies; suicide prevention.~~

~~(a) Each public and private institution of higher education shall develop and implement a policy to advise students and staff on suicide prevention programs available on and off campus that includes, but is not limited to:~~

~~(1) Crisis intervention access, which includes information for national, state and local suicide prevention hotlines;~~

~~(2) Mental health program access, which provides information on the availability of local mental health clinics, student health services and counseling services;~~

~~(3) Multimedia application access, which includes crisis hotline contact information, suicide warning signs, resources offered and free-of-cost applications;~~

~~(4) Student communication plans, which consist of creating outreach plans regarding educational and outreach activities on suicide prevention; and~~

~~(5) Post intervention plans which include creating a strategic plan to communicate effectively with students, staff and parents after the loss of a student to suicide.~~

~~(b) Each public and private institution of higher education shall provide all incoming students with information about depression and suicide prevention resources available to students. The information provided to students shall include available mental health services and other support services, including student-run organizations for individuals at risk of or affected by suicide.~~

~~(c) The information prescribed by subsection (a), subdivisions (1) through (4) of this section shall be posted on the website of each institution of higher education in this state.~~

~~(d) Any applicable free-of-cost prevention materials or programs shall be posted on the websites of the public and private institutions of higher education, the Higher Education Policy Commission, and the West Virginia Council for Community and Technical College Education.~~

8. West Virginia Code §18-1B-12 is hereby amended as follows:

~~§18B-1B-12. Research challenge.~~

~~(a) There is established in the State Treasury a special revenue fund known as the "research challenge fund." Moneys deposited in this fund shall be administered by the Higher Education Policy Commission.~~

~~The moneys deposited in this fund shall be used to fund coal research and development~~

~~projects at institutions of higher education located in this state. Research includes, but is not limited to, carbon sequestration and carbon technology research and development projects. The moneys deposited in this fund shall also be used to fund other research and development projects at institutions of higher education in this state.~~

~~(b) The policy commission shall use the recommendations of the EPSCoR state advisory council in its allocation of appropriations made to the research challenge fund and in its development of procedures for competitive application and review of proposals for funding. The research challenge is a critical component in the state's strategic plan for economic development and the contribution of higher education in the economic health of the state and the EPSCoR state advisory council is well qualified, by virtue of its research-oriented mission and membership, to advise the policy commission in the allocation of research challenge funding.~~

~~The objectives of the research challenge are to:~~

~~(1) Increase the research capacity of institutions of higher education and the competitiveness of these institutions to apply for external funding;~~

~~(2) Stimulate the development of research and research products that are directly applicable in improving the economic competitiveness of existing West Virginia industries and the development of new business and jobs in the state;~~

~~(3) Leverage limited state resources with private and federal funds to support projects and activities directly related to economic development by requiring matching funds and cooperative agreements with external partners;~~

~~(4) Increase the production of undergraduate and graduate students of programs in the sciences, technology, engineering and mathematics, with special attention to emerging~~

830 ~~disciplines such as biometrics; and~~

831 ~~(5) Hold institutions more accountable for the success of research projects funded under~~
832 ~~this program with the expectation that state support will be phased out and the project or~~
833 ~~activity will be terminated if it is unable to generate ongoing external support.~~

834 ~~(c) The priorities for the research challenge shall be:~~

835 ~~(1) Research on energy generation, distribution and utilization that builds on the state's~~
836 ~~existing energy research strengths, related research products and technology transfer~~
837 ~~programs;~~

838 ~~(2) Research, education and outreach conducted by the EPSCoR program. This federal~~
839 ~~program is recognized by the national science foundation as the state's primary entity for~~
840 ~~developing the research capacity that is so important to the state's economic and~~
841 ~~educational development;~~

842 ~~(3) Research projects that are related to the economic development of the state and that~~
843 ~~have significant potential to attract participation and funding from industrial, federal or~~
844 ~~foundation partners;~~

845 ~~(4) Collaborative projects between higher education and public education to improve~~
846 ~~science and mathematics education;~~

847 ~~(5) Graduate education in science (including medical education), technology,~~
848 ~~engineering and mathematics. The allocation shall be used for the increase in doctoral~~
849 ~~students and programs at West Virginia University and Marshall university in these~~
850 ~~fields; and~~

851 ~~(6) Recruitment of eminent scholars to strengthen research capacity and~~

852 ~~competitiveness for external funding.~~

853 ~~(d) The policy commission shall report to the Legislative Oversight committee on~~
854 ~~educational accountability annually on the results of the projects and activities funded by~~
855 ~~the research challenge appropriation.~~

856 ~~(e) The priorities established in subsection (c) of this section shall be reviewed~~
857 ~~biannually by the policy commission and the EPSCoR state advisory council beginning~~
858 ~~in two thousand six. The policy commission shall include any recommended adjustments~~
859 ~~in its budget request for the two thousand seven budget.~~

860 9. West Virginia Code §18B-1-1a is hereby amended as follows:

861 ~~**§18B-1-1a. Legislative intent; findings; establishment of state goals for higher**~~
862 ~~**education and education; creation of partnership to achieve state goals and**~~
863 ~~**objectives.**~~

864 ~~(a) It is the intent of the Legislature in enacting this section to establish state goals for~~
865 ~~public higher education which benefit the citizens of the State of West Virginia.~~

866 ~~(b) It is further the intent of the Legislature that this section be read and implemented in~~
867 ~~conjunction with the accountability system established in article one-d of this chapter and~~
868 ~~that any reference to this section in this code includes the provisions of that article.~~

869 ~~(c) Findings. --- The Legislature finds that post-secondary education is vital to the future~~
870 ~~of West Virginia. For the state to realize its considerable potential in the 21st Century, it~~
871 ~~must have a system for the delivery of post-secondary education which is competitive in~~
872 ~~the changing national and global environment, is affordable for the state and its citizenry~~
873 ~~and has the capacity to deliver the programs and services necessary to meet regional~~
874 ~~and statewide needs.~~

~~The Legislature further finds that it is vitally important for young people entering the workforce to have the education and skills to succeed in today's high-technology, knowledge-based economy. It is equally important for working-age adults who are the majority of the current and potential workforce also to possess the requisite education and skills to compete successfully in the workplace and to have the opportunity to continue learning throughout their lives. The future of the state rests not only on how well its youth are educated, but also on how well it educates its entire population of any age.~~

~~The Legislature further finds that providing access to a high-quality and affordable post-secondary education is a state responsibility and, while states spent more than \$70 billion on public higher education in two thousand six, they are not maximizing that investment. The Legislature recognizes the efforts of the National Conference of State Legislatures' Blue Ribbon Commission on Higher Education in producing a report to assist the states in higher education policymaking. According to the commission report, "Transforming Higher Education: National Imperative --- State Responsibility", the United States is losing its competitive advantage in a new, high-tech, highly mobile global economy. This lack of competitiveness is a matter of the highest urgency for federal and state policymakers and higher education is at the center of this discussion. The report further states that "higher education is both the problem and the solution" because the nation has failed to focus on how higher education energizes American competitiveness and revitalizes the states. Pursuant to these findings, the commission made some specific recommendations addressed to the states which include the following:~~

~~(1) Define clear state goals;~~

~~(2) Identify your state's strengths and weaknesses;~~

~~(3) Know your state demographic trends for the next ten to thirty years;~~

899 ~~(4) Identify a place or structure to sustain the public policy agenda;~~

900 ~~(5) Hold institutions accountable for their performance;~~

901 ~~(6) Rethink funding formulas and student aid;~~

902 ~~(7) Make a commitment to access, success and innovation;~~

903 ~~(8) Encourage partnerships;~~

904 ~~(9) Give special attention to adult learners; and~~

905 ~~(10) Focus on productivity.~~

906 ~~All of these recommendations are useful in providing policy guidance and have been~~
907 ~~given careful consideration in the development of this section and article one-d of this~~
908 ~~chapter.~~

909 ~~(d) Establishment of state goals. -- In recognition of its importance to the citizens of West~~
910 ~~Virginia, the Legislature hereby establishes the following goals for public higher~~
911 ~~education in the state:~~

912 ~~(1) The ultimate goal of public education is to enhance the quality of life for citizens of~~
913 ~~the State of West Virginia.~~

914 ~~(2) The overall focus of public education is on developing and maintaining a process of~~
915 ~~lifelong learning which is as seamless as possible at all levels, encourages citizens of all~~
916 ~~ages to increase their knowledge and skills and provides ample opportunities for them to~~
917 ~~participate in public higher education.~~

918 ~~(3) Higher education collaborates with public education and other providers to offer~~
919 ~~education opportunities:~~

920 ~~(A) To individuals of all ages and socioeconomic backgrounds in all areas of the state;~~
921 ~~and~~

922 ~~(B) To overcome financial barriers to participation for both traditional and nontraditional~~
923 ~~students.~~

924 ~~(4) Higher education seeks to enhance state efforts to diversify and expand the economy~~
925 ~~by focusing available resources on programs and courses which best serve students,~~
926 ~~provide the greatest opportunity for job creation and retention and are most supportive of~~
927 ~~emerging high technology and knowledge-based businesses and industries.~~

928 ~~(5) Higher education creates a learning environment that is student friendly and that~~
929 ~~encourages and assists students in the completion of degree requirements, certifications~~
930 ~~or skill sets within a reasonable period of time.~~

931 ~~(6) The learning environment expands participation for the increasingly diverse student~~
932 ~~population and responds to the needs of the current workforce and other nontraditional~~
933 ~~students.~~

934 ~~(7) Through the establishment of innovative curricula and assessment efforts, state~~
935 ~~institutions of higher education ensure that students graduate from nationally recognized~~
936 ~~and accredited programs and meet or exceed national and international standards for~~
937 ~~performance in their chosen fields as evidenced through placement and professional~~
938 ~~licensure examinations.~~

939 ~~(8) Higher education promotes academic research and innovation to achieve~~
940 ~~measurable growth in West Virginia's knowledge-based economic sector.~~

941 ~~(9) State institutions of higher education emphasize productivity and strive to exceed the~~
942 ~~performance and productivity levels of peer institutions. In return, and within the~~

943 ~~constraints of fiscal responsibility, the state seeks to invest in institutions so that they~~
944 ~~may adequately compensate faculty, classified employees and other employees at a~~
945 ~~competitive level to attract and retain high quality personnel.~~

946 ~~(10) State institutions of higher education are committed to a shared responsibility with~~
947 ~~faculty, staff, students and their communities to provide access to the knowledge and to~~
948 ~~promote acquisition of the skills and abilities necessary to establish and maintain~~
949 ~~physical fitness and wellness.~~

950 ~~(A) Programs that encourage healthy lifestyles are essential for the vibrancy of the~~
951 ~~institutions of higher education, for the well-being of the communities they serve and for~~
952 ~~the state as a whole.~~

953 ~~(B) Increasing the fitness levels of adults on college and university campuses is critically~~
954 ~~important for the people of West Virginia, not only for disease prevention, but also, and~~
955 ~~perhaps most importantly, to enhance the overall quality of life.~~

956 ~~(C) While individuals must bear the primary responsibility for their own health, it is~~
957 ~~imperative that the institutions provide appropriate education and support focused on~~
958 ~~enriching and expanding the short- and long-term views and attitudes towards physical~~
959 ~~activity, understanding the principles of wellness and their application to a healthy~~
960 ~~lifestyle, understanding what components are a necessary part of an all-around healthy~~
961 ~~lifestyle and learning how to set and achieve realistic goals aimed at establishing healthy~~
962 ~~habits for the benefit of long-term health and well-being.~~

963 ~~(e) Education partnership to achieve state goals and objectives. -- If public institutions of~~
964 ~~higher education are to provide services that meet the needs of state citizens as outlined~~
965 ~~in this section and article one-d of this chapter, then West Virginia must create and~~

~~participate in a partnership across various education organizations that recognizes the valuable contributions each member of the group can make. In addition to public education as outlined in section four, article one, chapter eighteen of this code and in addition to the State of West Virginia, key members of this partnership include the state institutions of higher education, the Council for Community and Technical College Education and the Higher Education Policy Commission.~~

~~(1) State institutions of higher education. -- The institutions are the cornerstone of efforts to provide higher education services that meet the needs of state citizens. To varying degrees, and depending upon their missions, these institutions serve the state in three major ways:~~

~~(A) Instruction. -- By providing direct instruction to students along with the student services necessary to support the instructional mission. These services have two primary goals:~~

~~(i) To produce college graduates who have the knowledge, skills and desire to make valuable contributions to society; and~~

~~(ii) To provide opportunities for citizens to engage in life-long learning to enhance their employability and their overall quality of life.~~

~~(B) Public service. -- By providing an occupational home for experts in a variety of fields and by serving as the educational home for students. In these capacities, institutions create a large and varied pool of high quality human resources capable of making valuable contributions to business and industry, local and state governments and communities. The following are examples of the types of public service that higher education institutions have to offer:~~

989 ~~(i) Workforce development, primarily through community and technical colleges, to meet~~
990 ~~the immediate and long-term needs of employers and employees;~~

991 ~~(ii) Technical assistance to state and local policymakers as they work to address~~
992 ~~challenges as diverse as ensuring that West Virginia's citizens receive quality health~~
993 ~~care, assisting in the development of a solid transportation infrastructure and ensuring~~
994 ~~that public school teachers have enriching professional development opportunities; and~~

995 ~~(iii) Opportunities to learn and serve in local communities, to teach civic responsibility~~
996 ~~and to encourage civic engagement.~~

997 ~~(C) Research. --- By conducting research at state institutions of higher education,~~
998 ~~particularly Marshall University and West Virginia University, to enhance the quality of~~
999 ~~life in West Virginia in the following ways:~~

1000 ~~(i) Targeting cutting-edge research toward solving pressing societal problems;~~

1001 ~~(ii) Promoting economic development by raising the level of education and specialization~~
1002 ~~among the population; and~~

1003 ~~(iii) Creating jobs through development of new products and services.~~

1004 ~~(2) The Council for Community and Technical College Education and the Higher~~
1005 ~~Education Policy Commission --- In their role as state-level coordinating boards, the~~
1006 ~~council and commission function as an important partners partner with state policy~~
1007 ~~leaders in providing higher education that meets state needs. The council and~~
1008 ~~commission provide service to the state in the following ways:~~

1009 ~~(A) By developing a public policy agenda for various aspects of higher education that is~~
1010 ~~aligned with state goals and objectives and the role and responsibilities of each~~

1011 ~~coordinating board the council;~~

1012 ~~(B) By ensuring that institutional missions and goals are aligned with relevant parts of~~
1013 ~~the public policy agenda and that institutions maximize the resources available to them~~
1014 ~~to fulfill their missions and make reasonable progress toward meeting established state~~
1015 ~~goals;~~

1016 ~~(C) By evaluating and reporting on progress in implementing the public policy agenda;~~

1017 ~~(D) By promoting system efficiencies through collaboration and cooperation across~~
1018 ~~institutions and through focusing institutional missions as appropriate; and~~

1019 ~~(E) By conducting research, collecting data and providing objective recommendations to~~
1020 ~~aid elected state officials in making policy decisions.~~

1021 ~~(3) State of West Virginia. -- Elected state officials represent the citizens of West Virginia~~
1022 ~~and are critical partners in providing quality higher education. In this context, these state-~~
1023 ~~level policymakers serve the state in the following ways:~~

1024 ~~(A) By establishing goals, objectives and priorities for higher education based on a~~
1025 ~~thoughtful, systematic determination of state needs;~~

1026 ~~(B) By providing resources necessary to address state goals, objectives and priorities for~~
1027 ~~higher education; and~~

1028 ~~(C) By providing incentives for and removing barriers to the achievement of state goals,~~
1029 ~~objectives and priorities.~~

1030 10. West Virginia Code §18B-1-2 is hereby amended as follows:

1031 **§18B-1-2. Definitions.**

1032 The following words when used in this chapter and chapter eighteen-c of this code have
1033 the meanings ascribed to them unless the context clearly indicates a different meaning:

1034 (1) “Administratively linked community and technical college” means a state institution of
1035 higher education delivering community and technical college education and programs
1036 which has maintained a contractual agreement to receive essential services from
1037 another accredited state institution of higher education prior to July 1, 2008;

1038 (2) “Advanced technology center” means a facility established under the direction of an
1039 independent community and technical college or the council for the purpose of
1040 implementing and delivering education and training programs for high-skill, high-
1041 performance Twenty-first Century workplaces;

1042 (3) “Approve” or “approval”, when used in reference to action by the ~~Commission~~OPE or
1043 the Council, means action in which the governance rationale of a governing board under
1044 its jurisdiction is given due consideration, ~~and the action of the Commission is to~~
1045 ~~additionally establish whether the proposed institutional action is consistent with law and~~
1046 ~~established policy and is an appropriate advancement of the public interest;~~

1047 (4) “Board of visitors” means the advisory board previously appointed for the West
1048 Virginia Graduate College and the advisory board previously appointed for West Virginia
1049 University Institute of Technology, which provide guidance to the Marshall University
1050 Graduate College and West Virginia University Institute of Technology, respectively;

1051 (5) “Broker” or “brokering” means serving as an agent on behalf of students, employers,
1052 communities or responsibility areas to obtain education services not offered at that
1053 institution. These services include courses, degree programs or other services
1054 contracted through an agreement with a provider of education services either in-state or

1055 out-of-state;

1056 ~~(6) “Chancellor” means the Chancellor for Higher Education where the context refers to~~
1057 ~~a function of the Higher Education Policy Commission. “Chancellor” means the~~
1058 Chancellor for Community and Technical College Education where the context refers to
1059 a function of the West Virginia Council for Community and Technical College Education;

1060 (7) “Chancellor for Community and Technical College Education” means the chief
1061 executive officer of the West Virginia Council for Community and Technical College
1062 Education employed pursuant to section three, article two-b of this chapter;

1063 ~~(8) “Chancellor for Higher Education” means the chief executive officer of the Higher~~
1064 ~~Education Policy Commission employed pursuant to section five, article one-b of this~~
1065 ~~chapter;~~

1066 (9_8) “Collaboration” means entering into an agreement with one or more providers of
1067 education services in order to enhance the scope, quality or efficiency of education
1068 services;

1069 (40_9) “Community and technical college”, in the singular or plural, means the free-
1070 standing community and technical colleges and other state institutions of higher
1071 education which deliver community and technical college education. This definition
1072 includes Blue Ridge Community and Technical College, Bridgemont Community and
1073 Technical College, Eastern West Virginia Community and Technical College, Kanawha
1074 Valley Community and Technical College, Mountwest Community and Technical
1075 College, New River Community and Technical College, Pierpont Community and
1076 Technical College, Southern West Virginia Community and Technical College, West
1077 Virginia Northern Community and Technical College and West Virginia University at

1078 Parkersburg;

1079 (44_10) "Community and technical college education" means the programs, faculty,
1080 administration and funding associated with the delivery of community and technical
1081 college education programs;

1082 (42_11) "Community and technical college education program" means any college-level
1083 course or program beyond the high school level provided through a public institution of
1084 higher education resulting in or which may result in a two-year associate degree award
1085 including an associate of arts, an associate of science and an associate of applied
1086 science; certificate programs and skill sets; developmental education; continuing
1087 education; collegiate credit and noncredit workforce development programs; and transfer
1088 and baccalaureate parallel programs. All programs are under the jurisdiction of the
1089 council. Any reference to "post-secondary vocational education programs" means
1090 community and technical college education programs as defined in this subsection;

1091 ~~(13) "Confirm" or "confirmation", when used in reference to action by the Commission,~~
1092 ~~means action in which substantial deference is allocated to the governing authority of a~~
1093 ~~governing board under its jurisdiction and the action of the Commission is to review~~
1094 ~~whether the proposed institutional action is consistent with law and established policy;~~

1095 (44_12) "Council" means the West Virginia Council for Community and Technical College
1096 Education created by article two-b of this chapter;

1097 (13) "Director" means the director of the means the chief executive officer of the West
1098 Virginia Office of Postsecondary Education.

1099 (45_14) "Dual credit course" or "dual enrollment course" means a credit-bearing college-
1100 level course offered in a high school by a state institution of higher education for high

1101 school students in which the students are concurrently enrolled and receiving credit at
1102 the secondary level.

1103 ~~(46_15)~~ “Essential conditions” means those conditions which shall be met by community
1104 and technical colleges as provided in section three, article three-c of this chapter;

1105 ~~(47_16)~~ “Exempted schools” means West Virginia University, including West Virginia
1106 University Potomac State College and West Virginia University Institute of Technology;
1107 Marshall University; and the West Virginia School of Osteopathic Medicine;

1108 ~~(48_17)~~ “Free-standing community and technical colleges” means Southern West
1109 Virginia Community and Technical College, West Virginia Northern Community and
1110 Technical College, and Eastern West Virginia Community and Technical College, which
1111 may not be operated as branches or off-campus locations of any other state institution of
1112 higher education;

1113 ~~(49_18)~~ “Governing boards” or “boards” means the institutional boards of Governors
1114 created by section one, article two-a of this chapter;

1115 ~~(20) “Higher Education Policy Commission”, “Policy Commission” or “Commission”~~
1116 ~~means the commission created by section one, article one-b of this chapter;~~

1117 ~~(24_19)~~ “Independent community and technical college” means a state institution of
1118 higher education under the jurisdiction of the council which is independently accredited,
1119 is governed by its own independent governing board, and may not be operated as a
1120 branch or off-campus location of any other state institution of higher education. This
1121 definition includes Blue Ridge Community and Technical College, Bridgemont
1122 Community and Technical College, Eastern West Virginia Community and Technical
1123 College, Kanawha Valley Community and Technical College, Mountwest Community

1124 and Technical College, New River Community and Technical College, Pierpont
1125 Community and Technical College, Southern West Virginia Community and Technical
1126 College, West Virginia Northern Community and Technical College, and West Virginia
1127 University at Parkersburg;

1128 ~~(22_20)~~ “Institutional compact” means the compact developed by a state institution of
1129 higher education, consistent with the public policy agenda for higher education;

1130 ~~(23_21)~~ “Institutional operating budget” or “operating budget” means for any fiscal year
1131 an institution’s total unrestricted education and general funding from all sources,
1132 including, but not limited to, tuition and fees and legislative appropriation, and any
1133 adjustments to that funding as approved by the ~~commission or~~ council based on
1134 comparisons with peer institutions or to reflect consistent components of peer operating
1135 budgets;

1136 (22) “Office of Postsecondary Education” or “Office” means the office created by section
1137 one, article one-b of this chapter.

1138 ~~(24_23)~~ “Rule” or “rules” means a regulation, standard, policy or interpretation of general
1139 application and future effect;

1140 ~~(25_24)~~ “Sponsoring institution” means a state institution of higher education that
1141 maintained an administrative link to a community and technical college providing
1142 essential services prior to July 1, 2008. This definition includes institutions whose
1143 governing boards had under their jurisdiction a community and technical college,
1144 regional campus or a division delivering community and technical college education and
1145 programs;

1146 ~~(26_25)~~ “State college and university” means Bluefield State College, Concord

1147 University, Fairmont State University, Glenville State College, Shepherd University, West
1148 Liberty University or West Virginia State University;

1149 (~~27~~26) "State institution of higher education" means any university, college or
1150 community and technical college under the jurisdiction of a governing board as that term
1151 is defined in this section;

1152 (~~28~~27) "Statewide network of independently accredited community and technical
1153 colleges" or "community and technical college network" means the state institutions of
1154 higher education under the jurisdiction of the West Virginia Council for Community and
1155 Technical College Education which are independently accredited, each governed by its
1156 own independent governing board, and each having a core mission of providing
1157 affordable access to and delivering high quality community and technical education in
1158 every region of the state; and

1159 (~~29~~28) "Vice Chancellor for Administration" means the person employed in accordance
1160 with section two, article four of this chapter. Any reference in this chapter or chapter
1161 eighteen-c of this code to "Senior Administrator" means Vice Chancellor for
1162 Administration.

1163 11. West Virginia Code §18B-1-3 is hereby amended as follows:

1164 **§18B-1-3. Transfer of powers, duties, property, obligations, etc.**

1165 (a) All powers, duties and authorities transferred to the board of Regents pursuant to
1166 former provisions of chapter eighteen of this code and transferred to the board of
1167 Trustees and Board of Directors which were created as the governing boards pursuant
1168 to the former provisions of this chapter and all powers, duties and authorities of the
1169 board of Trustees and Board of Directors, to the extent they are in effect on June 17,

1170 2000, are hereby transferred to the Interim Governing Board created in article one-c of
1171 this chapter and shall be exercised and performed by the Interim Governing Board until
1172 July 1, 2001, as such powers, duties and authorities may apply to the institutions under
1173 its jurisdiction.

1174 (b) Title to all property previously transferred to or vested in the board of Trustees and
1175 the board of Directors and property vested in either of the boards separately, formerly
1176 existing under the provisions of this chapter, are hereby transferred to the Interim
1177 Governing Board created in article one-c of this chapter until July 1, 2001. Property
1178 transferred to or vested in the board of Trustees and Board of Directors shall include:

1179 (1) All property vested in the board of Governors of West Virginia University and
1180 transferred to and vested in the West Virginia Board of Regents;

1181 (2) All property acquired in the name of the state Board of Control or the West Virginia
1182 Board of Education and used by or for the state colleges and universities and transferred
1183 to and vested in the West Virginia Board of Regents;

1184 (3) All property acquired in the name of the state Commission on Higher Education and
1185 transferred to and vested in the West Virginia Board of Regents; and

1186 (4) All property acquired in the name of the board of Regents and transferred to and
1187 vested in the respective Board of Trustees and Board of Directors.

1188 (c) Each valid agreement and obligation previously transferred to or vested in the board
1189 of Trustees and Board of Directors formerly existing under the provisions of this chapter
1190 is hereby transferred to the Interim Governing Board until July 1, 2001, as those
1191 agreements and obligations may apply to the institutions under its jurisdiction. Valid
1192 agreements and obligations transferred to the board of Trustees and Board of Directors

1193 shall include:

1194 (1) Each valid agreement and obligation of the board of Governors of West Virginia
1195 University transferred to and deemed the agreement and obligation of the West Virginia
1196 Board of Regents;

1197 (2) Each valid agreement and obligation of the state Board of Education with respect to
1198 the state colleges and universities transferred to and deemed the agreement and
1199 obligation of the West Virginia Board of Regents;

1200 (3) Each valid agreement and obligation of the state Commission on Higher Education
1201 transferred to and deemed the agreement and obligation of the West Virginia Board of
1202 Regents; and

1203 (4) Each valid agreement and obligation of the board of Regents transferred to and
1204 deemed the agreement and obligation of the respective Board of Trustees and Board of
1205 Directors.

1206 (d) All orders, resolutions and rules adopted or promulgated by the respective Board of
1207 Trustees and Board of Directors and in effect immediately prior to July 1, 2000, are
1208 hereby transferred to the Interim Governing Board until July 1, 2001, and shall continue
1209 in effect and shall be deemed the orders, resolutions and rules of the Interim Governing
1210 Board until rescinded, revised, altered or amended by the state Commission on Higher
1211 Education or the governing boards in the manner and to the extent authorized and
1212 permitted by law. Such orders, resolutions and rules shall include:

1213 (1) Those adopted or promulgated by the board of Governors of West Virginia University
1214 and in effect immediately prior to July 1, 1969, unless and until rescinded, revised,
1215 altered or amended by the board of Regents in the manner and to the extent authorized

1216 and permitted by law;

1217 (2) Those respecting state colleges and universities adopted or promulgated by the West
1218 Virginia Board of Education and in effect immediately prior to July 1, 1969, unless and
1219 until rescinded, revised, altered or amended by the board of Regents in the manner and
1220 to the extent authorized and permitted by law;

1221 (3) Those adopted or promulgated by the state Commission on Higher Education and in
1222 effect immediately prior to July 1, 1969, unless and until rescinded, revised, altered or
1223 amended by the board of Regents in the manner and to the extent authorized and
1224 permitted by law; and

1225 (4) Those adopted or promulgated by the board of Regents prior to July 1, 1989, unless
1226 and until rescinded, revised, altered or amended by the respective Board of Trustees or
1227 Board of Directors in the manner and to the extent authorized and permitted by law.

1228 (e) Title to all real property transferred to or vested in the Interim Governing Board
1229 pursuant to this section of the code is hereby transferred to the state Commission on
1230 Higher Education effective July 1, 2001. The board of Governors for each institution
1231 may request that the state Commission on Higher Education transfer title to the board of
1232 Governors of any real property specifically identifiable with that institution or the state
1233 Commission on Higher Education may initiate the transfer. Any such request must be
1234 made within two years of the effective date of this section and be accompanied by an
1235 adequate legal description of the property. In the case of real property that is specifically
1236 identifiable with Marshall University or West Virginia University, the state Commission on
1237 Higher Education shall transfer title to all real property, except real property that is used
1238 jointly by institutions or for statewide programs under the jurisdiction of the ~~Commission~~
1239 OPE or the Council, to the board of Governors of Marshall University or West Virginia

1240 University, as appropriate, upon receipt of a request from the appropriate governing
1241 board accompanied by an adequate legal description of the property.

1242 The title to any real property that is jointly utilized by institutions or for statewide
1243 programs ~~under the jurisdiction of the Commission or the Council~~ shall be retained by
1244 ~~the Commission jointly by the institutions utilizing the real property.~~

1245 (f) Ownership of or title to any other property, materials, equipment or supplies obtained
1246 or purchased by the Interim Governing Board or the previous governing boards on
1247 behalf of an institution is hereby transferred to the board of Governors of that institution
1248 effective July 1, 2001.

1249 (g) Each valid agreement and obligation previously transferred or vested in the Interim
1250 Governing Board and which was undertaken or agreed to on behalf of an institution or
1251 institutions is hereby transferred to the board of Governors of the institution or
1252 institutions for whose benefit the agreement was entered into or the obligation
1253 undertaken effective July 1, 2001.

1254 (1) The obligations contained in revenue bonds issued by the previous governing boards
1255 under the provisions of section eight, article ten of this chapter and article twelve-b,
1256 chapter eighteen of this code are hereby transferred to the ~~Commission~~ OPE and each
1257 institution shall transfer to the ~~Commission~~ OPE those funds the ~~Commission~~ OPE
1258 determines are necessary to pay that institution's share of bonded indebtedness.

1259 (2) The obligations contained in revenue bonds issued on behalf of a state institution of
1260 higher education pursuant to any other section of this code is hereby transferred to the
1261 board of Governors of the institution on whose behalf the bonds were issued.

1262 (h) All orders, resolutions, policies and rules:

1263 (1) Adopted or promulgated by the respective Board of Trustees, Board of Directors or
1264 Interim Governing Board and in effect immediately prior to July 1, 2001, are hereby
1265 transferred to the ~~Commission~~ OPE effective July 1, 2001, and continue in effect until
1266 rescinded, revised, altered, amended or transferred to the governing boards by the
1267 ~~Commission~~ OPE as provided in this section and in section six of this article.

1268 (2) Adopted or promulgated by the ~~Commission~~ Council relating solely to community and
1269 technical colleges or community and technical college education, or rules which the
1270 Council finds necessary for the exercise of its lawful powers and duties pursuant to the
1271 provisions of this chapter, may be adopted by the Council and continue in effect until
1272 rescinded, revised, altered, amended or transferred to the governing boards under the
1273 jurisdiction of the Council pursuant to section six of this article. ~~Nothing in this section~~
1274 ~~requires the initial rules of the Commission that are adopted by the Council to be~~
1275 ~~promulgated again under the procedure set forth in article three-a, chapter twenty-nine-a~~
1276 ~~of this code unless such rules are rescinded, revised, altered or amended.~~

1277 (3) Adopted or promulgated by the ~~Commission~~ OPE relating to multiple types of public
1278 institutions of higher education or community and technical college education as well as
1279 baccalaureate and post-baccalaureate education are transferred to the Council in part as
1280 follows:

1281 (A) That portion of the rule relating solely to community and technical colleges or
1282 community and technical college education is transferred to the Council and continues in
1283 effect until rescinded, revised, altered, amended or transferred to the governing boards
1284 by the Council as provided in this section and in section six of this article;

1285 (B) That portion of the rule relating to institutions or education other than community and
1286 technical colleges is retained by the ~~Commission~~ OPE and continues in effect until

1287 rescinded, revised, altered, amended or transferred to the governing boards by the
1288 ~~Commission~~ OPE as provided in this section and in section six of this article.

1289 (i) The ~~Commission~~ OPE may, in its sole discretion, transfer any rule, other than a
1290 legislative rule, to the jurisdiction of the governing boards of the institutions under its
1291 jurisdiction who may rescind, revise, alter or amend any rule so transferred pursuant to
1292 rules adopted by the ~~Commission~~ OPE pursuant to section six of this article.

1293 The Council may, in its sole discretion, transfer any rule, other than a legislative rule, to
1294 the jurisdiction of the governing boards of the institutions under its jurisdiction who may
1295 rescind, revise, alter or amend any rule so transferred pursuant to rules adopted by the
1296 Council pursuant to section six of this article.

1297 ~~(j) As to any title, agreement, obligation, order, resolution, rule or any other matter about~~
1298 ~~which there is some uncertainty, misunderstanding or question, the matter shall be~~
1299 ~~summarized in writing and sent to the Commission which shall make a determination~~
1300 ~~regarding such matter within thirty days of receipt thereof.~~

1301 (~~k~~ j) Rules or provisions of law which refer to other provisions of law which were
1302 repealed, rendered inoperative or superseded by the provisions of this section shall
1303 remain in full force and effect to such extent as may still be applicable to higher
1304 education and may be so interpreted. Such references include, but are not limited to,
1305 references to sections and prior enactments of article twenty-six, chapter eighteen of this
1306 code and code provisions relating to retirement, health insurance, grievance procedures,
1307 purchasing, student loans and savings plans. ~~Any determination which needs to be~~
1308 ~~made regarding applicability of any provision of law shall first be made by the~~
1309 ~~Commission.~~

1310 12. West Virginia Code §18B-1-4 is hereby amended as follows:

1311 **§18B-1-4. Prior transfer of powers, etc., to board of regents; board of regents**
1312 **abolished.**

1313 (a) All the powers, duties and authorities which the board of Governors of West Virginia
1314 University, previously established by article eleven of chapter eighteen of the code or by
1315 any other provisions of law, may have had immediately prior to July 1, 1969, shall be the
1316 powers, duties and authorities of the West Virginia board of regents until July 1, 1989.
1317 Until such date, all of the policies and affairs of West Virginia University shall be
1318 determined, controlled, supervised and managed by the West Virginia board of regents,
1319 who shall exercise and perform all such powers, duties and authorities.

1320 All powers, duties and authorities which the West Virginia Board of Education may have
1321 had with respect to state colleges and universities immediately prior to July 1, 1969,
1322 shall be the powers, duties and authorities of the West Virginia board of regents until
1323 July 1, 1989 Until such date, all of the policies and affairs of the state colleges and
1324 universities shall be determined, controlled, supervised and managed by the West
1325 Virginia board of regents, who shall exercise and perform all such powers, duties and
1326 authorities: Provided, That the standards for education of teachers and teacher
1327 preparation programs at the state colleges and universities shall continue to be under
1328 the general direction and control of the West Virginia Board of Education, and the West
1329 Virginia Board of Education shall have sole authority to continue, as authorized by
1330 section six, article two, chapter eighteen of this code, to enter into agreements with
1331 county boards of education for the use of the public schools to give prospective teachers
1332 teaching experience.

1333 All powers, duties and authorities vested in the state commission on higher education by

1334 previous provisions of chapter eighteen of this code or by any other provisions of law
1335 shall be the powers, duties and authorities of the West Virginia board of regents until
1336 July 1, 1989. Until such date, all of the powers, duties, and authorities of the state
1337 commission on higher education shall be exercised and performed by the West Virginia
1338 board of regents.

1339 (b) The board of regents shall be abolished on July 1, 1989.

1340 13. West Virginia Code §18B-1-6 is hereby amended as follows:

1341 **§18B-1-6. Rulemaking.**

1342 (a) The ~~commission~~ OPE is hereby empowered to promulgate, adopt, amend or repeal
1343 rules, in accordance with article three-a, chapter twenty-nine-a of this code, subject to
1344 section three of this article. This grant of rule-making authority does not limit, overrule,
1345 restrict, supplant or supersede the rule-making authority provided to the exempted
1346 schools.

1347 (b) The council is hereby empowered to promulgate, adopt, amend or repeal rules in
1348 accordance with article three-a, chapter twenty-nine-a of this code, subject to section
1349 three of this article. This grant of rule-making power extends only to those areas over
1350 which the council has been granted specific authority and jurisdiction by law.

1351 (c) As it relates to the authority granted to governing boards of state institutions of higher
1352 education to promulgate, adopt, amend or repeal any rule under this code:

1353 (1) "Rule" means any regulation, guideline, directive, standard, statement of policy or
1354 interpretation of general application which has institution-wide effect or which affects the
1355 rights, privileges or interests of employees, students or citizens. Any regulation,
1356 guideline, directive, standard, statement of policy or interpretation of general application

1357 that meets this definition is a rule for the purposes of this section.

1358 (2) Regulations, guidelines or policies established for individual units, divisions,
1359 departments or schools of the institution, which deal solely with the internal management
1360 or responsibilities of a single unit, division, department or school or with academic
1361 curricular policies that do not constitute a mission change for the institution, are excluded
1362 from this subsection, except for the requirements relating to posting.

1363 ~~(3) The commission shall promulgate a rule to guide the development of rules made by~~
1364 ~~the governing boards, including a process for comment by the commission as~~
1365 ~~appropriate, except the exempted schools, who shall each promulgate their own such~~
1366 ~~rules. The council shall promulgate a rule to guide the development and approval of~~
1367 ~~rules made by the governing boards~~ of community and technical college. ~~The~~
1368 ~~commission and council shall provide technical assistance in rulemaking as~~
1369 ~~requested.~~ The rules promulgated by the exempted schools, the ~~commission~~ OPE and
1370 council shall include, but are not limited to, the following provisions which shall be
1371 included in the rule on rules adopted by each governing board of a state institution of
1372 higher education:

1373 (A) A procedure to ensure that public notice is given and that the right of interested
1374 parties to have a fair and adequate opportunity to respond is protected, including
1375 providing for a thirty-day public comment period prior to final adoption of a rule;

1376 (B) Designation of a single location where all proposed and approved rules, guidelines
1377 and other policy statements are posted and can be accessed by the public;

1378 (C) A procedure to maximize Internet access to all proposed and approved rules,
1379 guidelines and other policy statements to the extent technically and financially feasible;

1380 and

1381 ~~(D) Except for the exempted schools, a procedure for the governing board to follow in~~
1382 ~~submitting its rules for review and comment by the commission and approval by the~~
1383 ~~council, as appropriate:~~

1384 ~~(i) The governing boards shall submit rules for review and comment to the commission.~~

1385 ~~(ii) The commission shall return to the governing board its comments and suggestions~~
1386 ~~within fifteen business days of receiving the rule.~~

1387 ~~(iii) If a governing board receives comments or suggestions on a rule from the~~
1388 ~~commission, it shall record these as part of the minute record. The rule is not effective~~
1389 ~~and may not be implemented until the governing board holds a meeting and places on~~
1390 ~~the meeting agenda the comments it has received from the commission.~~

1391 (d) Nothing in this section requires that any rule reclassified or transferred by the
1392 ~~commission~~ OPE or the council under this section be promulgated again under the
1393 procedures set out in article three-a, chapter twenty-nine-a of this code unless the rule is
1394 amended or modified.

1395 (e) The ~~commission~~ OPE and council each shall file with the Legislative Oversight
1396 Commission on Education Accountability any rule it proposes to promulgate, adopt,
1397 amend or repeal under the authority of this article.

1398 (f) The governing boards shall promulgate and adopt any rule which they are required to
1399 adopt by this chapter or chapter eighteen-c of this code no later than July 1, 2011 unless
1400 a later date is specified. On and after this date:

1401 (1) Any rule of a governing board which meets the definition set out in subsection (c) of

1402 this section and which has not been promulgated and adopted by formal vote of the
1403 appropriate governing board is void and may not be enforced;

1404 (2) Any authority granted by this code which inherently requires the governing board to
1405 promulgate and adopt a rule is void until the governing board complies with this section.

1406 (g) Within fifteen business days of the adoption of a rule, including repeal or amendment
1407 of an existing rule, and before the change is implemented, a community and technical
1408 college governing board shall furnish a copy of each rule which it has adopted to ~~the~~
1409 ~~commission or the council, respectively,~~ for review.

1410 (h) Annually, by October 1, each community and technical college governing board shall
1411 file with the ~~commission or the council, as appropriate,~~ a list of all rules that were in
1412 effect for that institution on July 1 of that year, including the most recent date on which
1413 each rule was considered and adopted, amended or repealed by the governing board.
1414 For all rules adopted, amended or repealed after the effective date of this section, the list
1415 shall include a statement by the chair of the governing board certifying that the
1416 governing board has complied with this section when each listed rule was promulgated
1417 and adopted.

1418 (i) Any rule of the commission Higher Education Policy Commission or council in effect
1419 at the time of the re-enactment of this section or approved by the Legislature during its
1420 ~~2017~~ 2019 Regular Session shall remain in effect and applicable to an institution of
1421 higher education ~~under the jurisdiction of the commission or council~~ until such time as an
1422 institution exercises its authority to adopt a rule pursuant to this chapter.

1423 14. West Virginia Code §18B-1A-4 is hereby amended as follows:

1424 **§18B-1A-4. Legislative financing goals.**

1425 (a) The Legislature recognizes that the higher education goals set forth in section one-a,
1426 article one of this chapter are of utmost importance. The Legislature further recognizes
1427 that meeting the goals may require the appropriation of funds above the current
1428 operating budgets of the institutions.

1429 (b) It is, therefore, the desire of the Legislature to increase funding annually for higher
1430 education at a rate not less than the annual percentage increase in the overall general
1431 revenue budget.

1432 ~~(c) If the commission or council, or both, determines that appropriations are insufficient~~
1433 ~~to fund the requirements of the institutional compacts under its jurisdiction, the~~
1434 ~~commission or council first shall consider extending the length of the compacts or~~
1435 ~~otherwise modifying the compacts to allow the institutions to achieve the benchmarks in~~
1436 ~~the compacts. If modifications to the institutional compacts are not sufficient to allow the~~
1437 ~~institutions to meet their benchmarks, the commission or council, or both, shall~~
1438 ~~recommend to the Legislature methods of making the higher education system more~~
1439 ~~efficient. The methods may include, but are not limited to, the following:~~

1440 ~~(1) Administrative efficiencies;~~

1441 ~~(2) Consolidation of services;~~

1442 ~~(3) Elimination of programs;~~

1443 ~~(4) Consolidating institutions; and~~

1444 ~~(5) Closing institutions.~~

1445 15. West Virginia Code §18B-1A-5 is hereby amended as follows:

1446 **§18B-1A-5. Financing; institutional operating budgets, additional funding.**

1447 (a) Budget request and appropriations. -- The ~~commission and council each~~ has the
1448 responsibility to develop a budget for the ~~state system of higher education under its~~
1449 ~~respective jurisdiction~~ community and technical colleges. The ~~commission~~ submits the
1450 budget request for higher education, including the budget request as developed by the
1451 ~~council, to the Governor before September 1, annually~~. The budget requests of the
1452 ~~commission and~~ the council specifically shall include the amount of the institutional
1453 operating budgets, as defined in section two, article one of this chapter, required for all
1454 ~~state institutions of higher education under their respective jurisdictions~~ community and
1455 technical colleges. The budget appropriation for the ~~state systems of higher education~~
1456 community and technical colleges under this chapter and other provisions of the law
1457 shall consist of separate control accounts or institutional control accounts, or some
1458 combination of such accounts, for appropriation of institutional operating budgets and
1459 other funds. The ~~commission and council each~~ is responsible for allocating state
1460 appropriations to supplement institutional operating budgets in accordance with this
1461 section. In addition to the institutional operating budget and incentive funding, however,
1462 the ~~commission and council each~~ is responsible for allocating funds that are
1463 appropriated to it for other purposes. In order to determine institutional allocations, it is
1464 the responsibility of the institutions and their respective institutional boards of Governors
1465 or advisors, as appropriate to provide to the ~~commission or council~~ documentation on
1466 institutional progress toward mission enhancement, preliminary peer comparison
1467 calculations, performance of increased productivity and academic quality and
1468 measurable attainment in fulfilling state priorities as set forth in this article. The
1469 documentation shall be provided to the ~~commission or council~~ no later than October 1,
1470 annually.

1471 ~~(b) Legislative funding priorities.~~

1472 ~~(1) The Legislature recognizes the current funding model has not moved all state~~
1473 ~~institutions equitably towards comparable peer funding levels. The model has left West~~
1474 ~~Virginia institutions at a competitive disadvantage to their national peers.~~

1475 ~~(2) The Legislature acknowledges that the resource allocation model used to comply~~
1476 ~~with enrolled committee substitute for Senate bill no. 547, passed during the legislative~~
1477 ~~session of 1995, alleviated some of the disparity that exists among state institutions'~~
1478 ~~operating budgets, but left significant differences between the institutions and their~~
1479 ~~national peers.~~

1480 ~~(3) The Legislature recognizes that a system of independently accredited community~~
1481 ~~and technical colleges is essential to the economic vitality of the state.~~

1482 ~~(4) The Legislature places great importance on achieving the priority goals outlined in~~
1483 ~~the public policy agenda and believes the state institutions of higher education should~~
1484 ~~play a vital role in facilitating the attainment of these goals.~~

1485 ~~(5) The Legislature also believes it is imperative that the state make progress on~~
1486 ~~narrowing the peer inequity while balancing the need for sustaining the quality of our~~
1487 ~~institutions.~~

1488 ~~(6) It is the charge of the commission and council to allocate all funds appropriated in~~
1489 ~~excess of the fiscal year 2001 general revenue appropriations in alignment with the~~
1490 ~~legislative funding priorities listed below. The commission and council shall consider the~~
1491 ~~priorities and assign a percentage of the total appropriation of new funds to each priority.~~

1492 ~~(A) Peer equity. --- Funds appropriated for this purpose increase the level of the~~
1493 ~~institutional operating budget for state institutions of higher education comparable to~~
1494 ~~their peer institutions. The allocation shall provide, subject to the availability of funds and~~

1495 ~~legislative appropriations, for a systematic adjustment of the institutional operating~~
1496 ~~budgets to move all institutions' funding in the direction of levels comparable with their~~
1497 ~~peers. Institutional allocations shall be calculated as follows:~~

1498 ~~(i) A calculation shall be made of the deficiency in per student funding of each institution~~
1499 ~~in comparison with the mean per student funding of the peer institutions as defined by~~
1500 ~~the commission pursuant to section three of this article;~~

1501 ~~(ii) For all institutions that are deficient in comparison with peer institutions, the amounts~~
1502 ~~of the deficiencies shall be totaled;~~

1503 ~~(iii) A ratio of the amount of the deficiency for an institution divided by the total amounts~~
1504 ~~of deficiency for all West Virginia institutions shall be established for each institution; and~~

1505 ~~(iv) The allocation to each institution shall be calculated by multiplying the ratio by the~~
1506 ~~total amount of money in the account;~~

1507 ~~(B) Independently accredited community and technical colleges development. -- Funds~~
1508 ~~appropriated for this purpose will ensure a smooth transition, where required, from~~
1509 ~~"component" community and technical colleges to independently accredited community~~
1510 ~~and technical colleges as defined in section two, article one of this chapter.~~
1511 ~~Appropriations for this purpose are to be allocated only to those institutions having~~
1512 ~~approved compacts with the council that expressly include the transition of their~~
1513 ~~component community colleges to independently accredited status and have~~
1514 ~~demonstrated measurable progress towards this goal. By July 1, 2005, or when all~~
1515 ~~required community and technical colleges are independently accredited, whichever first~~
1516 ~~occurs, funds for this purpose shall be allocated to the incentives for institutional~~
1517 ~~contributions to state priorities;~~

1518 ~~(C) Research challenge. --- Funds appropriated for this purpose shall assist public~~
1519 ~~colleges and universities in West Virginia to compete on a national and international~~
1520 ~~basis by providing incentives to increase their capacity to compete successfully for~~
1521 ~~research funding. The Legislature intends for institutions to collaborate in the~~
1522 ~~development and execution of research projects to the extent practicable and to target~~
1523 ~~research to the needs of the state as established in the public policy agenda and linked~~
1524 ~~to the future competitiveness of this state.~~

1525 ~~(i) The commission shall develop criteria for awarding grants to institutions under this~~
1526 ~~account, which may include, but are not limited to, the following:~~

1527 ~~(I) Grants to be used to match externally funded, peer-reviewed research;~~

1528 ~~(II) Grants to be used to match funds for strategic institutional investments in faculty and~~
1529 ~~other resources to increase research capacity;~~

1530 ~~(III) Grants to support funding for new research centers and projects that will foster~~
1531 ~~economic development and workforce investment within the state. These grants shall be~~
1532 ~~limited to five years and each research center or project funded shall receive a~~
1533 ~~decreasing award each year and shall be required to be supported solely by external~~
1534 ~~funding within five years;~~

1535 ~~(ii) The commission may establish an advisory council consisting of nationally prominent~~
1536 ~~researchers and scientists, including representatives from outside the state, to assist in~~
1537 ~~developing the criteria for awarding grants under this account.~~

1538 ~~(iii) For the purposes of making the distributions from this account, the commission shall~~
1539 ~~establish the definition for research, research funds and any other terms as may be~~
1540 ~~necessary to implement this subdivision; and~~

1541 ~~(D) Incentives for institutional contributions to state priorities. -- Funds appropriated for~~
1542 ~~this purpose provide incentives to institutions which demonstrate success toward~~
1543 ~~advancing the goals of the public policy agenda as set forth in section one-a, article one~~
1544 ~~of this chapter and to provide incentives for mission enhancement as set forth in section~~
1545 ~~two of this article.~~

1546 ~~(E) Sustained quality support. -- The commission and council shall provide additional~~
1547 ~~operating funds to institutions under their respective jurisdictions with approved~~
1548 ~~compacts. The commission and council shall allocate these funds on an equal~~
1549 ~~percentage basis to all institutions. The commission or council may delay distribution of~~
1550 ~~these funds to any institution which does not demonstrate measurable progress towards~~
1551 ~~the goals provided in its compact with the commission or council.~~

1552 ~~(c) Allocations to institutional operating budgets. -- For the purposes of this subsection,~~
1553 ~~the commission and council each shall establish by rule pursuant to subsection (f),~~
1554 ~~section two of this article the method for measuring the progress of each institution~~
1555 ~~towards meeting the benchmarks of its institutional compact.~~

1556 ~~(d) Allocation of appropriations to the institutions. -- Appropriations in this section shall~~
1557 ~~be allocated to the state institutions of higher education in the following manner:~~

1558 ~~(1) Each fiscal year appropriations from the funds shall be allocated only to institutions~~
1559 ~~which have:~~

1560 ~~(A) Approved compacts, pursuant to section two of this article; and~~

1561 ~~(B) Achieved their annual benchmarks for accomplishing the goals of their compacts, as~~
1562 ~~approved by the commission or council.~~

1563 ~~(2) If an institution has not achieved all of its annual benchmarks, the commission or~~

1564 ~~council may distribute a portion of the funds to the institution based on its progress as~~
1565 ~~the commission or council determines appropriate. The commission and council each~~
1566 ~~shall establish by rule, pursuant to subsection (f), section two of this article, the method~~
1567 ~~for measuring the progress of each institution toward meeting the benchmarks of its~~
1568 ~~institutional compact.~~

1569 ~~(e) Nothing in this section limits the appropriation or collection of fees necessary to~~
1570 ~~effectuate the operation and purpose of the commission or council.~~

1571 16. West Virginia Code §18B-1A-6 is hereby amended as follows:

1572 **§18B-1A-6. Graduate education.**

1573 (a) Intent. -- It is the intent of the Legislature to address the need for high quality
1574 graduate education programs to be available throughout the state.

1575 (b) Findings. -- The Legislature makes the following findings:

1576 (1) Since West Virginia ranks below its competitor states in graduate degree production,
1577 particularly in the areas that are important to the state's competitive position in the new
1578 economy of the twenty-first century, there is a considerable need for greater access to
1579 graduate education, especially at the master's degree level;

1580 (2) There is a significant disparity in access to part-time graduate degree programs
1581 among the different regions of the state and part-time graduate enrollments are heavily
1582 concentrated in the counties immediately surrounding Marshall University and West
1583 Virginia University;

1584 (3) There is a particular need for increased access to graduate programs linked directly
1585 to the revitalization of the regional economies of the state; and

1586 (4) There is a particular need for improved quality and accessibility of preservice and in-
1587 service programs for teachers in subject matter fields.

1588 (c) In order to meet the need for graduate education, the ~~Commission~~ OPE is
1589 responsible for accomplishing the following:

1590 ~~(1) Ensuring that West Virginia University and Marshall University assist in the~~
1591 ~~expansion of access to master's degree programs throughout West Virginia. These~~
1592 ~~institutions shall place a strong emphasis on collaboration with the baccalaureate~~
1593 ~~colleges and community and technical colleges in each region when funds are available;~~

1594 ~~(2_1)~~ Ensuring that any institution providing a master's degree program under the
1595 provisions of this section provides a meaningful, coherent program by offering courses in
1596 such a way that students, including place-bound adults, have ample opportunity to
1597 complete a degree in a reasonable period of time;

1598 ~~(3_2)~~ Focusing on providing courses that enhance the professional skills of teachers in
1599 their subject areas;

1600 ~~(4_3)~~ Ensuring that programs are offered in the most cost-effective manner to expand
1601 access throughout the region and the state; and

1602 ~~(5_4)~~ Determining the graduate program needs of each region.

1603 (d) Bluefield State College, Concord University, Fairmont State University, Glenville
1604 State College, Shepherd University, West Liberty State College and West Virginia State
1605 University shall meet the need for graduate education in their regions pursuant to this
1606 subsection and subsection (c) of this section.

1607 (1) If an institution's proposal to offer a Master's degree receives the approval of the

1608 ~~Commission~~ OPE, that Master's degree may be offered solely by the institution.

1609 (2) If an institution does not receive the approval of the ~~Commission~~ OPE for a proposal
1610 to offer a Master's degree, that institution may broker or collaborate with another higher
1611 education institution to develop a revised proposal for offering that brokered or
1612 collaborative Master's degree.

1613 (e) There is an urgent need for master's degree programs for teachers in disciplines or
1614 subject areas, such as mathematics, science, history, literature, foreign languages and
1615 the arts. Currently, master's-level courses in education that are offered in the regions
1616 served by the state universities are primarily in areas such as guidance and counseling,
1617 administration, special education and other disciplines unrelated to teaching in subject
1618 areas. If this need is not being met in a region through the procedure established in
1619 subsection (d) of this section, then the graduate center in that region may plan a
1620 master's degree program in education focused on teaching in subject area fields in
1621 which the demand is not being met. No institution may begin a graduate program under
1622 the provisions of this section until the program has been reviewed and approved by the
1623 ~~Commission~~ OPE. The ~~Commission~~ OPE shall approve only those programs, as
1624 authorized by this subsection, that emphasize serving the needs of teachers and schools
1625 in the colleges' immediate regions. In determining whether a program should be
1626 approved, the ~~Commission~~ OPE also shall rely upon the recommendations of the
1627 statewide task force on teacher quality provided in section eight, article fourteen of this
1628 chapter.

1629 (f) The ~~Commission~~ OPE shall review all graduate programs being offered under the
1630 provisions of this section and, using the criteria established for program startup in
1631 subsection (d) of this section, determine which programs should be discontinued.

1632 (g) At least annually, the governing boards shall evaluate graduate programs developed
1633 pursuant to the provisions of this section and report to the ~~Commission~~ OPE on the
1634 following:

1635 (1) The number of programs being offered and the courses offered within each program;

1636 (2) The disciplines in which programs are being offered;

1637 (3) The locations and times at which courses are offered;

1638 (4) The number of students enrolled in the program; and

1639 (5) The number of students who have obtained master's degrees through each program.

1640 The governing boards shall provide the ~~Commission~~ OPE with any additional information
1641 the ~~Commission~~ OPE requests in order to make a determination on the viability of a
1642 graduate program.

1643 (h) In developing any graduate program under the provisions of this section, institutions
1644 shall consider delivering courses at times and places convenient to adult students who
1645 are employed full time. Institutions shall place an emphasis on extended degree
1646 programs, distance learning and off-campus centers which utilize the cost-effective
1647 nature of extending existing university capacity to serve the state rather than duplicating
1648 the core university capacity and incurring the increased cost of developing master's
1649 degree programs at other institutions throughout the state.

1650 (i) Brokering institutions shall invite proposals from other public institutions of higher
1651 education for service provision prior to contracting with other institutions: Provided, That
1652 if institutions propose providing graduate programs in service areas other than in their
1653 responsibility district, the institution seeking to establish a program shall work through

1654 the district's lead institution in providing those services.

1655 (j) In addition to the approval required by the ~~Commission~~ OPE, authorization for any
1656 institution to offer a master's degree program under the provisions of this section is
1657 subject to the formal approval processes established by the governing boards.

1658 17. West Virginia Code §18B-1C-2 is hereby amended as follows:

1659 **§18B-1C-2. West Virginia University Institute of Technology; division of West**
1660 **Virginia University.**

1661 (a) West Virginia University Institute of Technology is a fully integrated division of West
1662 Virginia University. All administrative and academic units are consolidated with primary
1663 responsibility for direction and support assigned to West Virginia University.
1664 The campus president of the West Virginia University Institute of Technology shall
1665 appoint a board of visitors and the board of visitors shall provide guidance to the division
1666 in fulfilling its mission. The chairperson of the board of visitors serves as an ex-officio,
1667 voting member of the West Virginia University Board of Governors.

1668 (b) The fully integrated division is named West Virginia University Institute of
1669 Technology. (c) The provisions of this section do not affect the independent accreditation
1670 or continued operation of The BridgeValley Community and Technical College. The
1671 BridgeValley Community and Technical College is an independent community and
1672 technical college administered by its own governing board under the jurisdiction and
1673 authority of the council and is subject to all applicable provisions of this chapter and
1674 chapter eighteen-c of this code.

1675 (d) Auxiliary enterprises shall be incorporated into the West Virginia University auxiliary
1676 enterprise system. The West Virginia University Board of Governors shall determine if

1677 operations at West Virginia University Institute of Technology can be operated on a self-
1678 sufficient basis when establishing rates for auxiliary services and products.

1679 (e) West Virginia University Institute of Technology has a strong reputation in
1680 engineering and other scientific disciplines. These programs shall be maintained,
1681 cultivated and emphasized further as its sustaining mission over the next decade.

1682 ~~(f) By the November 1, 2006, and annually thereafter for a period of four years, the West~~
1683 ~~Virginia University Board of Governors shall prepare and submit a report to the~~
1684 ~~commission and Legislative Oversight Commission on Education Accountability on~~
1685 ~~progress being made to implement the provisions of this article.~~

1686 ~~(g)~~ West Virginia University Institute of Technology shall develop or maintain
1687 baccalaureate degree programs as a permanent component of its curriculum.

1688 (h) Until such time as West Virginia University no longer owns assets, other than assets
1689 of de minimis value, in Montgomery and the Upper Kanawha Valley, the university
1690 shall continue to collaborate with the County Commission of Kanawha County, the
1691 County Commission of Fayette County, the City of Smithers and the City of Montgomery,
1692 should it elect to do so, and each entity is authorized and encouraged to enter into
1693 agreements designed to foster economic and community redevelopment for
1694 Montgomery and the Upper Kanawha Valley.

1695 (i) Notwithstanding the provisions of paragraph a, subdivision four, subsection b, section
1696 four, article one-b of this chapter, West Virginia University and West Virginia University
1697 Institute of Technology, as it relates to providing academic programming at the Beckley
1698 campus, shall be subject to academic program review and approval of the ~~commission~~
1699 OPE pursuant to subdivision four, subsection b, section four, article one-b of this

1700 chapter, including complying with series eleven of title one hundred thirty-three of the
1701 rules of the ~~Higher Education Policy Commission~~ OPE, relating to academic program
1702 review and approval, including, but not limited to, the provisions relating to offering new
1703 programming in Beckley or offering existing programming in Beckley that is already
1704 offered by West Virginia University at a location other than Beckley: Provided, That the
1705 provisions of this subsection do not apply to the programs that the ~~Higher Education~~
1706 ~~Policy Commission~~ OPE approved on or before December 31, 2015, for offerings by
1707 West Virginia University at the West Virginia University Institute of Technology at the
1708 Beckley campus.

1709 (j) Prior to seeking approval with the ~~Chancellor or Commission~~ OPE as required by the
1710 provisions of subsection (i) of this section, West Virginia University or the West Virginia
1711 University Institute of Technology, as appropriate, shall offer to meet with
1712 representatives of Bluefield State College and Concord University to determine whether
1713 collaborative opportunities exist relating to the proposed offering requiring approval.

1714 (k) The presidents of Concord University, Bluefield State College, and West Virginia
1715 Institute of Technology shall meet at least quarterly to discuss the collaborative efforts
1716 contemplated by this article and the collaborative agreement, including assessing and
1717 reviewing the progress made on collaborative efforts, or at such other times as agreed to
1718 by all of the presidents of the referenced institutions.

1719 18. West Virginia Code §18B-1D-1 is hereby amended as follows:

1720 **§18B-1D-1. Legislative intent and purpose; short title; rules required.**

1721 (a) The intent of the Legislature in the enactment of this article is to outline and organize
1722 the elements of accountability for public higher education into an effective, coherent

1723 system to provide guidance to the state institutions of higher education, ~~the commission~~
1724 and the council and to clarify the roles, relationships and responsibilities between and
1725 among these entities, the citizens of West Virginia and elected state officials. The main
1726 purposes of the accountability system are as follows:

1727 (1) To develop agreement on higher education goals, objectives and priorities through
1728 negotiation and consensus-building between elected officials acting on behalf of the
1729 citizens of the state and ~~the commission and~~ the council and institutions which receive
1730 public funds and provide education services;

1731 (2) To create a seamless education system and hold boards and institutions accountable
1732 for meeting state goals and objectives.

1733 (3) To provide a data-driven, step-by-step process to determine the progress of public
1734 higher education in addressing established goals, objectives and priorities;

1735 (4) To promote cooperation and collaboration among all entities which are involved in
1736 the delivery of public education in West Virginia; and

1737 (5) To provide for generation, collection and dissemination of data on which sound state-
1738 level policy decisions can be based. Possible uses of this data include the following:

1739 (A) Identifying institutions and systems that increase quality and productivity; and

1740 (B) Creating a mechanism to target a portion of state appropriations to institutions and
1741 systems based on performance in meeting established state goals and objectives.

1742 (b) This article, together with ~~section one-a, article one of this chapter and~~ section four,
1743 article one, chapter eighteen of this code, shall be known as and may be cited as Vision
1744 2020: An Education Blueprint for 2020.

1745 ~~(c) By October 1, 2008, the commission and the council shall propose rules for~~
1746 ~~legislative approval in accordance with the provisions of section six, article one of this~~
1747 ~~chapter and article three-a, chapter twenty-nine-a of this code concerning the~~
1748 ~~accountability system for higher education outlined in this article.~~

1749 ~~(1) The commission and the council may propose rules jointly or separately and may~~
1750 ~~choose to address all of the accountability system in a single rule or may propose~~
1751 ~~additional rules to cover specific elements.~~

1752 ~~(2) At a minimum, the rules shall address the respective responsibilities of the various~~
1753 ~~parties, the development of statewide master plans, the process of entering into~~
1754 ~~institutional and state compacts, performance indicators and institution and state-level~~
1755 ~~reporting to ensure that higher education is accountable to the citizens of West Virginia.~~

1756 19. West Virginia Code §18B-1D-2 is hereby amended as follows:

1757 **§18B-1D-2. Definitions.**

1758 (a) General. — For the purposes of this article and section one-a, article one of this
1759 chapter, terms have the meaning ascribed to them in section two, article one of this
1760 chapter, unless the context in which the term is used clearly requires a different meaning
1761 or a specific definition is provided in this section.

1762 (b) Definitions. —

1763 (1) “Accountability system for public higher education” or “accountability system” means
1764 all research, reports, documents, data and any other materials, the collection, analysis
1765 and dissemination of which are necessary or expedient to accomplish the purposes of
1766 this article or section one-a, article one of this chapter. The system includes legislative
1767 goals, objectives and priorities; public policy agendas; statewide master plans; state and

1768 institutional compacts; implementation plans; institutional mission statements and master
1769 plans; and the statewide report card.

1770 (2) "Education partnership to achieve state goals and objectives" or "education
1771 partnership" means the formal and informal working relationships established between
1772 and among the State of West Virginia, ~~the commission~~, the council, the State Board of
1773 Education and State Department of Education and the state institutions of higher
1774 education for the purpose of achieving state goals and objectives.

1775 (3) "Functional literacy rate" means the percentage of adults over the age of seventeen
1776 who are able to read beyond a fourth grade level and interpret basic information from
1777 sources such as road signs, job applications, newspaper articles and food and medicine
1778 labels.

1779 (4) "Goals" means those long-term public purposes which are the desired and expected
1780 end result for which public higher education is established.

1781 (5) "Implementation plan" means a document developed within the higher education
1782 community that identifies a series of objectives, sets forth performance indicators that
1783 can be used to determine if objectives are being achieved, outlines strategies for
1784 accomplishing the objectives and identifies benchmarks for evaluating progress in
1785 accomplishing the objectives over the life cycle of the plan.

1786 ~~(6) "Institutions under the jurisdiction of the commission" relative to the accountability~~
1787 ~~system established by this article and section one-a, article one of this chapter means~~
1788 ~~Bluefield State College, Concord University, Fairmont State University, Glenville State~~
1789 ~~College, Shepherd University, West Liberty State College, and West Virginia State~~
1790 ~~University.~~

1791 (7_6) "Institutions under the jurisdiction of the council" relative to the accountability
1792 system established by this article and section one-a, article one of this chapter means
1793 Blue Ridge Community and Technical College, the Community and Technical College at
1794 West Virginia University Institute of Technology, Eastern West Virginia Community and
1795 Technical College, Marshall Community and Technical College, New River Community
1796 and Technical College, Pierpont Community and Technical College, Southern West
1797 Virginia Community and Technical College, West Virginia Northern Community and
1798 Technical College, West Virginia State Community and Technical College and West
1799 Virginia University at Parkersburg.

1800 (8_7) "Net college costs" means the total cost of tuition, room and board minus the
1801 amount of financial aid a student receives.

1802 (9_8) "Objectives" means the ends to be accomplished or attained within a specified
1803 period of time for the purpose of meeting the established goals.

1804 (10_9) "Priority" or "priorities" means the order in which objectives are to be addressed
1805 for the purpose of achieving state goals.

1806 (11_10) "Strategy" or "strategies" means specific activities carried out by public higher
1807 education which are directed toward accomplishing specific objectives.

1808 (12_11) "Statewide master plan" or "system master plan" means a document developed
1809 by the council or commission that sets forth community and technical college system
1810 goals, objectives and strategies and is aligned with, but not limited to, meeting state
1811 goals, objectives and priorities.

1812 (13_12) "STEM courses and programs" means curricula leading to a degree or other
1813 recognized credential in the science, technology, engineering and mathematics fields of

1814 study or specialization.

1815 (44_13) "State compact" means a formal, written agreement between the council and/or
1816 the commission and at least one other member of the education partnership to achieve
1817 state goals and objectives where significant collaboration and commitment of resources
1818 between the parties to the agreement is required in order to achieve the desired results.

1819 20. West Virginia Code §18B-1D-3 is hereby amended as follows:

1820 ~~§18B-1D-3. State vision for public higher education; findings; establishment of~~
1821 ~~objectives.~~

1822 ~~(a) The Legislature finds that availability of high-quality post-secondary education is so~~
1823 ~~important to the well-being of the citizens of West Virginia that it is in the best interests of~~
1824 ~~the state to focus attention on areas of particular concern and within those areas to~~
1825 ~~specify objectives and priorities that must be addressed by two thousand twenty. The~~
1826 ~~purpose of these objectives and priorities is to achieve the broad-based goals for public~~
1827 ~~higher education established in section one-a, article one of this chapter. Areas of~~
1828 ~~special concern to the Legislature include economic and workforce development;~~
1829 ~~education access and affordability; innovation; student preparation; degree and/or~~
1830 ~~program completion; intra- and inter-system cooperation and collaboration; research;~~
1831 ~~and teaching and learning.~~

1832 ~~(1) Economic and workforce development.---~~

1833 ~~(A) Diversifying and strengthening the economy of the state;~~

1834 ~~(B) Providing incentives to systems and institutions to focus attention on those courses~~
1835 ~~and programs which create and retain jobs in the state, especially among the emerging~~
1836 ~~high-technology, knowledge-based businesses and industries.~~

- 1837 ~~(2) Access and affordability.---~~
- 1838 ~~(A) Maintaining geographic access while eliminating unnecessary duplication;~~
- 1839 ~~(B) Enhancing education opportunities for the widest range of state citizens:~~
- 1840 ~~(i) By establishing tuition and fee levels for in-state students that do not inhibit access to~~
- 1841 ~~public education nor cause students to incur excessive debt. This is particularly~~
- 1842 ~~important in West Virginia where about two-thirds of all students attending college are~~
- 1843 ~~enrolled in public higher education institutions and where families devote a very large~~
- 1844 ~~share of their incomes to pay the cost of education. The share of costs paid by families~~
- 1845 ~~remains very high even after adjusting for the impact of financial aid; and~~
- 1846 ~~(ii) By establishing tuition and fee rates for out-of-state students at levels which, at a~~
- 1847 ~~minimum, cover the full cost of instruction unless doing so is inconsistent with a clearly~~
- 1848 ~~delineated public policy goal established by the Legislature, the commission or the~~
- 1849 ~~council.~~
- 1850 ~~(iii) Innovation.--- Devise innovative programs, delivery modes, partnerships, research~~
- 1851 ~~initiatives, curricula and pedagogy to achieve the needs of the state and its citizens and~~
- 1852 ~~carry out the mission and objectives of the state institutions of higher education.~~
- 1853 ~~Methods include aligning entrepreneurial efforts, research and partnerships with~~
- 1854 ~~established state goals.~~
- 1855 ~~(iv) Student preparation.--- Ensure that potential students are academically prepared for~~
- 1856 ~~college and that graduates are adequately prepared for careers or further education.~~
- 1857 ~~(V) Degree and/or program completion.--- Despite significant improvement over the past~~
- 1858 ~~decade, fewer than twenty percent of state residents hold a bachelor's degree. This~~
- 1859 ~~shortage of highly educated, highly qualified workers substantially limits the state's ability~~

1860 ~~to compete in the knowledge-based economy.~~

1861 ~~(vi) Collaboration and cooperation. -- Deliver education services to the extent possible~~
1862 ~~through collaboration, coordination and brokering, with particular emphasis on the need~~
1863 ~~for a seamless relationship between public and post-secondary education.~~

1864 ~~(vii) Research. -- Develop a greater research capacity within public higher education to~~
1865 ~~enhance West Virginia in the eyes of the larger economic and education community,~~
1866 ~~develop greater specialized expertise in high technology and policy fields, create more~~
1867 ~~employment opportunities within the state and provide a basis for improved capacity to~~
1868 ~~compete in the new economy through research focused on meeting state needs.~~

1869 ~~(viii) Teaching and learning. -- Develop admission and exit standards for students and~~
1870 ~~emphasize professional staff development, program assessment and evaluation and~~
1871 ~~other incentives to improve teaching and learning. Ensure access to stable and~~
1872 ~~continuing graduate-level programs in every region of the state, particularly in STEM~~
1873 ~~subject areas and teacher education related to teaching within a subject area to improve~~
1874 ~~teacher quality.~~

1875 ~~(b) Vision 2020: Objectives for public higher education. -- In view of the findings outlined~~
1876 ~~in subsection (a) of this section, the Legislature hereby establishes the following~~
1877 ~~objectives to be addressed as highest priorities beginning on the effective date of this~~
1878 ~~article through development of compacts and/or implementation plans between and~~
1879 ~~among members of the education partnership as provided in subsection (e), section one-~~
1880 ~~a, article one of this chapter. The following is the legislative vision for the years two~~
1881 ~~thousand eight through two thousand twenty:~~

1882 ~~(1) Objective. -- Develop a state-level facilities plan and funding mechanism to reduce~~

1883 ~~the obligation of students and parents to bear the cost of higher education capital~~
1884 ~~projects and facilities maintenance.~~

1885 ~~(A) Problem statement. --~~

1886 ~~(i) West Virginia is one of the very few states in the nation which does not address~~
1887 ~~higher education capital project and facilities maintenance needs through a statewide~~
1888 ~~plan.~~

1889 ~~(ii) The burden of paying for capital projects and deferred maintenance is placed on~~
1890 ~~students and their families through collection of capital fees at the institution level and~~
1891 ~~contributes significantly to the poor grade West Virginia receives each year in the~~
1892 ~~category of "Affordability" on "Measuring Up: The National Report Card on Higher~~
1893 ~~Education".~~

1894 ~~(iii) Net college costs for low- and lower middle-income students to attend state~~
1895 ~~community and technical colleges and four-year colleges and universities average~~
1896 ~~approximately forty-five percent of their annual family income.~~

1897 ~~(iv) The high cost of capital fees contributes directly to the amount of debt incurred by~~
1898 ~~students during their college years and the necessity to repay student loans severely~~
1899 ~~limits career choices and areas of residence after graduation.~~

1900 ~~(B) Expected outcomes. -- Success in meeting this goal can be measured in part by~~
1901 ~~benchmarks which include the following:~~

1902 ~~(i) Development by the council and commission of a compact with elected state officials~~
1903 ~~to fund a significant portion of higher education capital project needs from dedicated~~
1904 ~~state revenues;~~

1905 ~~(ii) Development by the council and commission of a system to establish priorities for~~
1906 ~~institution community and technical college capital projects in a manner that is consistent~~
1907 ~~with state public policy goals for higher education;~~

1908 ~~(iii) Implementation of facilities maintenance plans by institutions to ensure that~~
1909 ~~maintenance needs are not deferred inappropriately;~~

1910 ~~(iv) Efficient use of existing classroom and other space by institutions:~~

1911 ~~(I) New capital funding is applied effectively to projects at institutions that have a~~
1912 ~~demonstrated need for new facilities and major renovations; and~~

1913 ~~(II) The cost of operating and maintaining the facilities and physical plants of institutions~~
1914 ~~are appropriate for the size and mission of the institution; and~~

1915 ~~(v) Capital and facilities maintenance planning that gives careful consideration to the~~
1916 ~~recommendations arising from the study mandated by section nine, article fourteen of~~
1917 ~~this chapter.~~

1918 ~~(2) Objective. -- Increase academic rigor and improve learning at higher education~~
1919 ~~institutions.~~

1920 ~~(A) Problem statement. -- West Virginia has made significant progress on certain~~
1921 ~~indicators within the category of student learning, but lags far behind national and~~
1922 ~~regional averages on others.~~

1923 ~~(i) The state compares very well in workforce preparation as reflected in professional~~
1924 ~~licensure examinations, ranking among the top five states in the country. More West~~
1925 ~~Virginia graduates take these examinations than is typical nationally and the passage~~
1926 ~~rate is at the national average.~~

1927 ~~(ii) The state also ranks well above the national average passage rate on the state~~
1928 ~~teacher's examination when compared to other states; however, there is serious cause~~
1929 ~~for concern when the state is compared to the national benchmark in preparing students~~
1930 ~~for graduate study.~~

1931 ~~(I) West Virginia ranks more than fifty percentage points below the national average in~~
1932 ~~preparing students to take and pass graduate admissions examinations.~~

1933 ~~(II) Fewer West Virginia graduates take these examinations than is typical nationally and~~
1934 ~~the proportion earning competitive scores is only about seventy-five percent of the~~
1935 ~~national average.~~

1936 ~~(B) Expected outcomes. --- Success in meeting this goal can be measured in part by~~
1937 ~~benchmarks which include the following:~~

1938 ~~(i) State institutions of higher education develop or use existing nationally normed~~
1939 ~~assessments of student learning outcomes. Data generated through these assessments~~
1940 ~~are analyzed and the results applied by the institutions to improve the quality of~~
1941 ~~undergraduate general education programs; and~~

1942 ~~(ii) Implementation plans at the system and institution levels are developed to improve~~
1943 ~~student preparation for graduate study and to expand graduate and professional~~
1944 ~~education, where appropriate.~~

1945 ~~(3) Objective. --- Increase the percentage of entering students who persist to receive a~~
1946 ~~degree, a certificate or an industry-recognized credential.~~

1947 ~~(A) Problem statement. ---~~

1948 ~~(i) This goal is particularly important to West Virginia where only about one person in five~~

1949 holds an associate degree or higher.

1950 (ii) The lack of a well-trained workforce is reflected in the most recent score of forty-one
1951 received by the state on the nationally recognized New Economy Index which measures
1952 the extent to which a state is prepared to participate in knowledge-based industries. This
1953 low score places the state well below the national benchmark of sixty on the index.

1954 (iii) State institutions of higher education have placed a greater emphasis on student
1955 recruitment than on student retention and completion. This strategy alone cannot be
1956 successful in meeting state needs for the following reasons:

1957 (I) The number of state high school graduates is expected to decline over the next
1958 several years; therefore, institutions must improve their performance in retaining the
1959 students who enroll.

1960 (II) West Virginia is among the leading states in the percentage of first-year students at
1961 community colleges who return for their second year and large percentages of freshmen
1962 at four-year colleges and universities return for their sophomore year; however, when
1963 compared with other states, only a small percentage of these students actually persist to
1964 earn a bachelor's degree or associate degree within six years.

1965 (III) The state performs poorly on international comparisons of enrolled students who
1966 complete certificates or degrees, trailing behind other industrialized and even some third
1967 world nations.

1968 (IV) While the state college-going rate has improved, most state institutions have made
1969 only marginal progress over the past decade in increasing the percentage of students
1970 who persist to obtain a degree or certificate.

1971 (B) Expected outcomes.---

1972 ~~(i) Enhanced quality of life for West Virginians, including increased level of per capita~~
1973 ~~income; and~~

1974 ~~(ii) Increased economic development opportunities by expanding existing high-~~
1975 ~~technology and knowledge-based businesses and industries and attracting new ones~~
1976 ~~which demand highly qualified professionals.~~

1977 ~~(4) Objective. --- State institutions of higher education, particularly community and~~
1978 ~~technical colleges, make maximum effort to recruit and retain adults twenty-five years~~
1979 ~~old or over.~~

1980 ~~(A) Problem statement. ---~~

1981 ~~(i) The percentage of West Virginia's working-age adults enrolled part-time in college-~~
1982 ~~level education or training is very low and the state has experienced one of the largest~~
1983 ~~declines in the nation on this measure over the past twelve years.~~

1984 ~~(ii) A large part of preparing workers for the 21st Century and for a high-quality style of~~
1985 ~~life hinges upon providing opportunity for adults to acquire a series of skill sets in~~
1986 ~~addition to obtaining a degree or other credential.~~

1987 ~~(iii) A major focus for community and technical colleges is upon providing programs to~~
1988 ~~upgrade employee skills through obtaining industry credentials. Currently, however, only~~
1989 ~~certificate program degrees (one-year) and associate degrees (two-year) are counted for~~
1990 ~~funding purposes even though other types of credentials often are as important in~~
1991 ~~meeting workforce development goals as providing degree programs.~~

1992 ~~(B) Expected outcomes. ---~~

1993 ~~(i) Provide programs of interest to nontraditional students, including those that afford~~

- 1994 ~~them the opportunity to obtain certificates and credentials, enhance career development~~
1995 ~~and acquire new skill sets;~~
- 1996 ~~(ii) Develop a high-visibility marketing program which makes adults aware of the~~
1997 ~~opportunities available to them and assists them in entering or reentering the learning~~
1998 ~~environment;~~
- 1999 ~~(iii) Provide for lower cost tuition and fee rates, particularly at the community and~~
2000 ~~technical colleges, and/or greater access to financial aid for adult full- and part-time~~
2001 ~~students.~~
- 2002 ~~(iv) Develop open admissions policies which provide opportunities for adults to~~
2003 ~~participate in public post-secondary education beginning at any level of preparedness.~~
2004 ~~Most working-age adults cannot or will not "go back to high school" in order to prepare~~
2005 ~~themselves to participate in higher education.~~
- 2006 ~~(v) Tailor institutional policies to meet the needs of adults, recognizing that these~~
2007 ~~individuals have responsibilities that are different from those of traditional-aged college~~
2008 ~~students. High on this list of needs are flexible class schedules to accommodate work~~
2009 ~~obligations and waiving dorm residency requirements.~~
- 2010 ~~(5) Objective. -- Provide incentives to state institutions of higher education to encourage~~
2011 ~~emphasis on STEM courses and programs leading to degrees in the high-demand fields~~
2012 ~~of science, technology, engineering and mathematics and to encourage collaboration~~
2013 ~~with public education to stimulate interest and prepare students to succeed in these~~
2014 ~~fields.~~
- 2015 ~~(A) Problem statement. --~~
- 2016 ~~(i) STEM courses often are more expensive to deliver than traditional programs;~~

2017 ~~therefore, institutions may be reluctant to start or expand programs in these areas~~
2018 ~~because of anticipated cost;~~

2019 ~~(ii) Institutions have difficulty recruiting and retaining faculty members in STEM areas~~
2020 ~~because of competition from surrounding states and other market forces;~~

2021 ~~(iii) There is insufficient communication between STEM teachers in public education,~~
2022 ~~STEM faculty in higher education and professionals employed in STEM-related careers~~
2023 ~~such as engineering;~~

2024 ~~(iv) Many students have not taken sufficiently rigorous high school courses to allow them~~
2025 ~~to succeed in post-secondary STEM courses and programs. A large percentage of~~
2026 ~~students enrolled in higher education STEM programs either withdraw from the~~
2027 ~~institution or change majors within the first year; and~~

2028 ~~(v) The transition from high school to college is difficult for many high school students~~
2029 ~~who lack a family role model to provide guidance relevant to the higher education~~
2030 ~~experience.~~

2031 ~~(B) Expected outcomes.---~~

2032 ~~(i) Increased capacity for high quality instruction across public higher education;~~

2033 ~~(ii) Increased student access to high quality undergraduate and graduate research~~
2034 ~~opportunities in science, technology, engineering and mathematics;~~

2035 ~~(iii) Enhanced economic development opportunities through increased numbers of~~
2036 ~~highly-qualified professionals available to business and industry;~~

2037 ~~(iv) Development of a consistent and effective forum for communication among STEM~~
2038 ~~faculty in public and higher education and relevant professional communities to address~~

2039 ~~the continuing needs of students, educators and industry;~~

2040 ~~(v) Increased percentage of high school students who have access to and take~~

2041 ~~advantage of rigorous STEM courses;~~

2042 ~~(vi) Alignment of STEM curricula between public and higher education;~~

2043 ~~(vii) Development of a finance formula that gives greater weight to courses taken in high-~~

2044 ~~cost disciplines and/or those that are critical to the state economy; and~~

2045 ~~(viii) Creation of a STEM coordinator position within the faculty of each state institution of~~

2046 ~~higher education to provide outreach to secondary schools, to mentor freshman students~~

2047 ~~and to collaborate with coordinators at other institutions. Because of the size of the~~

2048 ~~student body, the two research universities may need to create coordinator positions~~

2049 ~~specific to certain high-demand STEM disciplines such as engineering and computer~~

2050 ~~science.~~

2051 ~~(6) Objective. -- Develop a stable funding stream for state institutions of higher education~~

2052 ~~to pay for essential programs which are expensive to deliver, are in high demand and/or~~

2053 ~~are critical to the state's capacity to replace an aging workforce as employees retire. This~~

2054 ~~objective has a particular impact on community and technical colleges which deliver~~

2055 ~~high-cost technical programs.~~

2056 ~~(A) Problem statement. --~~

2057 ~~(i) An educated and technically skilled workforce is vital to the state's ability to be~~

2058 ~~competitive in the global marketplace. Currently, West Virginia's employers must~~

2059 ~~struggle to find a sufficient number of highly qualified workers to fill the jobs they have~~

2060 ~~available; and~~

2061 ~~(ii) The majority of technical occupations require the delivery of equipment-intensive,~~
2062 ~~high-cost programs that state institutions of higher education, especially community and~~
2063 ~~technical colleges, lack the capacity to provide.~~

2064 ~~(B) Expected outcomes.---~~

2065 ~~(i) State institutions delivering community and technical college education focus on~~
2066 ~~expanding and/or implementing technical programs to meet the needs of high-demand,~~
2067 ~~high-wage occupations;~~

2068 ~~(ii) Funding priorities for community and technical colleges focus on developing and~~
2069 ~~maintaining high-cost technical programs;~~

2070 ~~(iii) Creation of a strategy to fund the replacement, upgrading and purchase of~~
2071 ~~equipment to implement and/or maintain technical education programs; and~~

2072 ~~(iv) Support critical, noncredit programming by incorporating the number of contact hours~~
2073 ~~delivered into a formula to distribute funding to community and technical colleges.~~

2074 ~~(7) Objective. --- Develop a mechanism to assure uniform delivery of community and~~
2075 ~~technical college education for all regions of the state.~~

2076 ~~(A) Problem statement. --- The average education attainment rate in West Virginia lags~~
2077 ~~eleven percent behind the national average in part because delivering education~~
2078 ~~programs to the state's adult, place-bound and rural populations presents significant~~
2079 ~~challenges.~~

2080 ~~(B) Expected outcomes.---~~

2081 ~~(i) All state citizens have access to a minimum of two years of college education~~
2082 ~~regardless of their place of residence within the state.~~

2083 ~~(ii) The state institutions increase the innovative use of technology and distance~~
2084 ~~education to provide general and technical education access in sparsely populated rural~~
2085 ~~areas.~~

2086 ~~(iii) Creation of a seamless education system and uniform transfer of credits with special~~
2087 ~~attention to transfers between community and technical colleges and four-year~~
2088 ~~institutions;~~

2089 ~~(iv) Appropriate use of adjunct faculty; and~~

2090 ~~(v) Where feasible, use of facilities in public schools, technical centers and other public~~
2091 ~~facilities as classroom space.~~

2092 ~~(8) Objective. --- Develop greater research capacity throughout public higher education,~~
2093 ~~with a special focus on the state's two doctoral degree-granting universities.~~

2094 ~~(A) Problem statement. ---~~

2095 ~~(i) West Virginia ranks near the bottom among all states in the amount of federal and~~
2096 ~~privately funded sponsored research it receives. Historically, only the National Science~~
2097 ~~Foundation's Experimental Program to Stimulate Competitive Research (EPSCOR) has~~
2098 ~~focused on building research capacity in the state, but if West Virginia is to benefit from~~
2099 ~~the increased economic opportunity, better jobs and higher standard of living associated~~
2100 ~~with more STEM professionals in the population, the state must invest more to build its~~
2101 ~~research capacity; and~~

2102 ~~(ii) Low research capacity results in low levels of intellectual property creation, patenting~~
2103 ~~and licensing of commercial property.~~

2104 ~~(B) Expected outcomes. ---~~

2105 ~~(i) Partnering between and among higher education institutions in West Virginia and~~
2106 ~~between state institutions and larger, resource-rich higher education institutions outside~~
2107 ~~the state;~~

2108 ~~(ii) Developing an institutional and/or statewide research niche and focusing resources~~
2109 ~~on research that contributes most to meeting state needs;~~

2110 ~~(iii) Leveraging scarce resources to make steady, targeted investments in research in~~
2111 ~~niche areas where the state can be a real player at a competitive level;~~

2112 ~~(iv) Developing specific research expertise within the two state doctoral degree-granting~~
2113 ~~universities to generate and analyze data to provide policy recommendations. The areas~~
2114 ~~of focus include funding strategies for higher education, demographic trends and~~
2115 ~~methods to determine and meet workforce development needs by anticipating job~~
2116 ~~creation and credential requirements;~~

2117 ~~(v) Improving communication among the research branches of higher education~~
2118 ~~institutions, including identification of mutually complementary areas of interest to~~
2119 ~~increase funding opportunities and collaboration on intellectual property issues; and~~

2120 ~~(vi) Focusing on economic development through commercial applications of research~~
2121 ~~and recruitment of new research faculty members for this purpose.~~

2122 ~~(9) Objective. -- Increase the percentage of functionally literate adults in each region of~~
2123 ~~the state.~~

2124 ~~(A) Problem statement. --~~

2125 ~~(i) The literacy attainment of a population is defined at its most basic level as the~~
2126 ~~percentage of those individuals over the age of fifteen who can read and write, but such~~

2127 ~~a definition does not address the realities of the 21st Century. The National Literacy Act~~
2128 ~~of 1991 and the National Workforce Investment Act of 1998 both define literacy more~~
2129 ~~broadly as "an individual's ability to read, write, speak in English, compute and solve~~
2130 ~~problems at levels of proficiency necessary to function on the job, in the family of the~~
2131 ~~individual and in society".~~

2132 ~~Approximately twenty percent of the adult population in West Virginia cannot meet this~~
2133 ~~definition of functional literacy. One adult out of every five in the state lacks the basic~~
2134 ~~literacy skills needed to succeed at work, to enter the learning environment of post-~~
2135 ~~secondary education, to acquire advanced occupational training or to participate in~~
2136 ~~preparing his or her own children to learn.~~

2137 ~~(ii) The high rate of illiteracy in West Virginia not only handicaps adults in seeking~~
2138 ~~employment and achieving their goals for their own quality of life, but also has serious~~
2139 ~~implications for the future of their children and for the state.~~

2140 ~~There is a direct, positive correlation between the reading scores of children and the~~
2141 ~~education level of their parents. The National Assessment of Education Progress~~
2142 ~~(NAEP) has concluded that youngsters whose parents are functionally illiterate are twice~~
2143 ~~as likely to become functionally illiterate adults.~~

2144 ~~(iii) When the level of functional illiteracy in West Virginia is compared to the~~
2145 ~~requirements for high-demand occupations, the negative consequences for the economy~~
2146 ~~of the state become obvious. The International Adult Literacy Survey (IALS) established~~
2147 ~~a scale of five levels which is used extensively to measure the literacy attainment of~~
2148 ~~adults. When this scale was used to compare the literacy requirements of projected~~
2149 ~~high-growth occupations with those in declining occupations such as certain types of~~
2150 ~~manufacturing, researchers found that level three literacy is required for the new jobs,~~

2151 while level two is sufficient for the jobs in the declining occupations. Therefore, workers
2152 displaced from jobs in declining occupations as well as those seeking to enter or reenter
2153 the work place must possess literacy skills a full level higher than those required for
2154 workers only a few years ago. Documents such as manuals outlining standard operating
2155 procedures, health and safety manuals, leave forms and retirement options that they
2156 encounter daily require a level of literacy well above level two.

2157 (iv) A highly skilled and literate work force is essential to the success of state businesses
2158 and industry. A ten percent increase in the average education of all workers, equivalent
2159 to approximately one additional year of schooling, is associated with an increase of
2160 about nine percent in the productivity of that labor force. Additionally, workers who lack
2161 literacy skills cannot provide the data and feedback that companies need to make
2162 informed business decisions. A company whose employees cannot record reliable
2163 production data cannot assess its performance from year to year or determine how well
2164 it is meeting its long range goals and objectives.

2165 (v) The rate of functional illiteracy in West Virginia also has a direct impact on the health
2166 of state citizens. Residents with low literacy skills have difficulty in many health areas
2167 including the following:

2168 (I) Understanding the correct way to take medication, interpret test results or perform
2169 simple self-testing such as taking temperatures or checking blood glucose levels;

2170 (II) Understanding and following directions given by physicians or the written instructions
2171 provided with prescription or over-the-counter medication for themselves or for their
2172 children;

2173 (III) Reading and understanding information on food labels and other nutrition

2174 ~~information to make sound decisions necessary to establish and maintain healthy~~
2175 ~~lifestyles; and~~

2176 ~~(IV) Furnishing correct information in emergencies to medical providers about illnesses,~~
2177 ~~surgeries and medications or understanding how to fill out insurance forms and other~~
2178 ~~health-related documents.~~

2179 ~~(B) Expected outcomes.---~~

2180 ~~(i) Develop greater access and capacity to deliver literacy and remedial education,~~
2181 ~~workforce development training and other higher education services to place-bound~~
2182 ~~adults primarily through the community and technical colleges;~~

2183 ~~(ii) Increase the percentage of the working age population who participate in higher~~
2184 ~~education, either full or part time;~~

2185 ~~(iii) Establish a statewide mechanism to collect data to provide a baseline for measuring~~
2186 ~~progress toward meeting the goal of functional literacy for all working-age adults and to~~
2187 ~~serve as a framework for setting priorities, identifying gaps in service and targeting~~
2188 ~~services to key populations, industries, economic sectors and geographic areas;~~

2189 ~~(iv) Develop programs that include, at a minimum, the following:~~

2190 ~~(I) Learning opportunities within a real-life context, such as workplace and family literacy~~
2191 ~~programs;~~

2192 ~~(II) Recognition of the diversity of individual abilities, skill levels, circumstances and life~~
2193 ~~goals; and~~

2194 ~~(III) Strategies to access, promote and accommodate a variety of instructional methods~~
2195 ~~and learning styles.~~

2196 ~~(v) Develop a culture committed to life-long learning by creating literacy-rich~~
2197 ~~environments wherever people live and work that are capable of influencing changes in~~
2198 ~~individual behavior; and~~

2199 ~~(vi) Create partnerships among schools, employers, workers, governments and~~
2200 ~~communities to achieve these objectives and mechanisms to collect, interpret and~~
2201 ~~disseminate data to assist policymakers in determining the appropriate level of~~
2202 ~~resources essential to support lifelong learning systems.~~

2203 21. West Virginia Code §18B-1D-4 is hereby amended as follows:

2204 **§18B-1D-4. Responsibilities of Higher Education Policy Commission Office of**
2205 **Postsecondary Education** and Council for Community and Technical College
2206 **Education; ~~development of public policy agendas; for reports; institutional~~**
2207 **~~responsibilities.~~**

2208 ~~(a) It is the responsibility of the commission, in cooperation with the council, to develop,~~
2209 ~~oversee and advance the public policy agenda mandated by section four, article one-b of~~
2210 ~~this chapter to address the goals and objectives established pursuant to this article and~~
2211 ~~section one-a, article one of this chapter, including, but not limited to, aligning state and~~
2212 ~~institutional compacts, master plans, implementation plans and institutional missions for~~
2213 ~~institutions of higher education except the exempted schools with state goals and~~
2214 ~~objectives to accomplish the purposes of this article.~~

2215 ~~(b) It is the responsibility of the council, in cooperation with the commission when~~
2216 ~~applicable, to develop, oversee and advance the public policy agenda mandated by~~
2217 ~~section six, article two-b of this chapter to address the goals and objectives established~~
2218 ~~pursuant to this article and section one-a, article one of this chapter, including, but not~~

2219 ~~limited to, aligning state and institutional compacts, master plans, implementation plans~~
2220 ~~and institutional missions with state goals and objectives to accomplish the purposes of~~
2221 ~~this article.~~

2222 (e) It is further the responsibility of the and council to collect the data, for institutions of
2223 higher education including the exempted schools, assemble it in the appropriate format
2224 and transmit all reports and any other essential documents as needed to fulfill the
2225 purposes of this article. Each report shall contain a brief, concise executive summary
2226 and shall include trends and recommendations in text format. Recommendations shall
2227 be ranked by order of importance and shall be supported by objective data available
2228 elsewhere in the report. In addition to those specifically mandated by this chapter or
2229 chapter eighteen-c of this code, reporting responsibilities include, but are not limited to,
2230 the following:

2231 (4__a) Ensuring that data systems collect the essential information state-level
2232 policymakers' need to answer key policy questions to fulfill the purposes of the
2233 accountability system established pursuant to this article and section one-a, article one
2234 of this chapter;

2235 (2__b) Collaborating with public education to establish policies to link existing pre-K, K-12,
2236 higher education and teacher data systems to enable tracking of student progress and
2237 teacher performance over time; and

2238 (3__c) Ensuring that reports provide data analyses to determine if students entering the
2239 public higher education systems are prepared for post-secondary education and if
2240 students obtaining degrees, certificates or other credentials are prepared to pursue
2241 careers or to continue their education.

2242 ~~(d) It is the responsibility of public institutions of higher education except the exempted~~
2243 ~~schools to report to the commission or the council, as appropriate, on plans,~~
2244 ~~accomplishments and recommendations to implement the goals and objectives~~
2245 ~~contained in the institutional and state compacts.~~

2246 22. West Virginia Code §18B-1D-5 is hereby amended as follows:

2247 **~~§18B-1D-5. Master plans; reports; approval process.~~**

2248 ~~(a) The commission and the council each shall develop a master plan for public higher~~
2249 ~~education that is closely aligned with the goals and objectives of this article and section~~
2250 ~~one-a, article one of this chapter as they relate to the missions of institutions under their~~
2251 ~~respective jurisdictions.~~

2252 ~~(b) The authority of the commission and the council, respectively, related to developing~~
2253 ~~and implementing statewide master plans is subject to the following conditions:~~

2254 ~~(1) The master plans shall be established for periods of not more than five years.~~

2255 ~~(2) The master plans in place on the effective date of this article continue in effect until~~
2256 ~~the end of the five-year planning cycle unless amended or rescinded by the commission~~
2257 ~~or council, respectively, pursuant to this article.~~

2258 ~~(3) Any new master plan proposed by the commission or council shall be communicated~~
2259 ~~to the Legislative Oversight Commission on Education Accountability and may not be~~
2260 ~~adopted or implemented without the approval of that body;~~

2261 ~~(4) The commission and council each shall perform a comprehensive review of its~~
2262 ~~master plan at least annually and shall revise it periodically as appropriate to meet state~~
2263 ~~goals and objectives.~~

2264 ~~(5) The commission and the council each shall review the progress of its higher~~
2265 ~~education system in meeting the goals and objectives of the master plan and report to~~
2266 ~~the Legislative Oversight Commission on Education Accountability, with detailed~~
2267 ~~recommendations for amending the plan, by January 1, 2009, and annually thereafter.~~

2268 ~~(6) At the end of each five-year planning cycle and as an integral part of the preparation~~
2269 ~~of a new master plan, the commission and the council, respectively, shall prepare and~~
2270 ~~submit to the Legislative Oversight Commission on Education Accountability a~~
2271 ~~comprehensive report containing at least the following:~~

2272 ~~(A) A detailed, data-based analysis of the progress of the system and the institutions~~
2273 ~~within the system toward meeting each goal and objective included in the current plan;~~
2274 ~~and~~

2275 ~~(B) A strategy for using this data as a basis for developing the master plan for the next~~
2276 ~~planning cycle.~~

2277 ~~(c) The master plan shall include a detailed set of system objectives designed to meet~~
2278 ~~the state goals and objectives outlined in this article and section one-a, article one of this~~
2279 ~~chapter, including, but not limited to, the following:~~

2280 ~~(A) A well-developed analysis of missions, degree offerings, resource requirements,~~
2281 ~~physical plant needs, personnel needs, enrollment levels and other planning~~
2282 ~~determinants and projections for public higher education and other matters necessary in~~
2283 ~~such a plan to assure that the needs of the state for a quality system of higher education~~
2284 ~~are addressed; and~~

2285 ~~(B) A strategy for cooperation and collaboration with the state Board of Education and~~
2286 ~~State Department of Education, state institutions of higher education, the counterpart~~

2287 ~~state coordinating board and other relevant education providers to assure that a~~
2288 ~~comprehensive and seamless system of education is developed and implemented for~~
2289 ~~West Virginia.~~

2290 23. West Virginia Code §18B-1D-6 is hereby amended as follows:

2291 **~~§18B-1D-6. State compacts; legislative intent; rule required; implementation plans~~**
2292 **~~authorized.~~**

2293 ~~(a) It is the intent of the Legislature that members of the education partnership to~~
2294 ~~achieve state goals and objectives engage in developing state compacts between and~~
2295 ~~among themselves for the purpose of enhancing the well-being of the citizens of West~~
2296 ~~Virginia. Such a compact constitutes a formal contract and focuses on the goals and~~
2297 ~~objectives established pursuant to this article and section one-a, article one of this~~
2298 ~~chapter. A compact is called for when achievement of specific goals or objectives~~
2299 ~~requires significant collaboration and commitment of resources by more than one~~
2300 ~~member of the partnership.~~

2301 ~~(b) The rules to be proposed relating to state compacts pursuant to subsection (c),~~
2302 ~~section one of this article shall include, but are not limited to, the following components:~~

2303 ~~(1) A procedure to determine when a state compact is necessary or desirable;~~

2304 ~~(2) A procedure for determining the identity of parties to the compact and for establishing~~
2305 ~~compact terms;~~

2306 ~~(A) Parties to the compact may be any two or more members of the education~~
2307 ~~partnership to achieve state goals and objectives who are positioned to make significant~~
2308 ~~contributions to meeting compact objectives; and~~

2309 ~~(B) The terms of the compact shall focus on achievement of objectives. The expected~~
2310 ~~outcomes shall be stated in concrete terms that are measurable.~~

2311 ~~(3) A mechanism for negotiating agreement on compact objectives. The mechanism~~
2312 ~~shall provide for negotiation and development of consensus among the parties and must~~
2313 ~~be reasonable in its operation and outcomes expectations;~~

2314 ~~(4) A procedure for creating and consolidating commitment between and among parties~~
2315 ~~to the compact. Most state compacts will extend over multiple years and will require that~~
2316 ~~negotiation between education partners and elected state officials take into account the~~
2317 ~~constraints of the political process and the limits on available resources; and~~

2318 ~~(5) A process for periodic review, assessment and reporting of progress toward meeting~~
2319 ~~the compact objectives. The rule shall provide for objective analysis and reporting to the~~
2320 ~~compact partners and to the elected officials of the state.~~

2321 ~~(c) In addition to authorizing the commission and the council to enter into state compacts~~
2322 ~~pursuant to subsections (a) and (b) of this section, it is the intent of the Legislature to~~
2323 ~~encourage them strongly to develop implementation plans together with other members~~
2324 ~~of the public higher education community to achieve system and institutional goals and~~
2325 ~~objectives which are consistent with and supportive of the goals and objectives~~
2326 ~~established in this article and section one-a, article one of this chapter.~~

2327 ~~(1) At a minimum, each implementation plan shall contain the following elements:~~

2328 ~~(A) Identification of the goal and the objectives to be achieved;~~

2329 ~~(B) Identification of the parties to the implementation plan and a process for developing~~
2330 ~~consensus among the parties;~~

2331 ~~(C) A needs assessment or other mechanism to determine current status of the~~
2332 ~~proposed objectives, including a survey of available resources and other data relevant to~~
2333 ~~achieving the objectives;~~

2334 ~~(D) Identification of challenges or barriers to meeting objectives;~~

2335 ~~(E) Delineation of tasks to be performed;~~

2336 ~~(F) A specific time line for meeting objectives;~~

2337 ~~(G) An evaluation process administered periodically to determine progress in meeting~~
2338 ~~the objectives during the life span of the plan; and~~

2339 ~~(H) A method for determining success in achieving the objectives following the closing~~
2340 ~~date established by the time line.~~

2341 ~~(2) Implementation plans are internal documents developed among members of the~~
2342 ~~public higher education community and are not subject to an external approval process.~~

2343 24. West Virginia Code §18B-1D-7 is hereby amended as follows:

2344 **~~§18B-1D-7. Findings; establishment of institutional compacts; compact elements;~~**
2345 **~~submission date; review and approval process; rule required.~~**

2346 ~~-(a) The Legislature finds that West Virginia long has recognized the value of education~~
2347 ~~and, on a per capita income basis, ranks very high among the states in its investment to~~
2348 ~~support public education. The Legislature further finds that a combination of state and~~
2349 ~~national demographic and economic factors as well as significant changes in methods of~~
2350 ~~course and program delivery compel both the state and public higher education to create~~
2351 ~~a process that will strengthen institutional capacity to provide the services so valued by~~
2352 ~~the citizens of the state and so essential to promoting economic vitality.~~

2353 ~~(b) Therefore, each state college or university except the exempted schools, shall~~
2354 ~~prepare an institutional compact for submission to the commission and each community~~
2355 ~~and technical college shall prepare an institutional compact for submission to the~~
2356 ~~council. When the process herein provided is completed, the resulting institutional~~
2357 ~~compact shall contain at a minimum the following basic components:~~

2358 ~~(1) Institutional strategies for focusing resources on meeting the goals and objectives set~~
2359 ~~forth in this article and section one-a, article one of this chapter; and~~

2360 ~~(2) Commission or council strategies for promoting and supporting the institution in~~
2361 ~~fulfilling its mission and objectives, to make it more competitive with its peers and to~~
2362 ~~ensure the continuity of academic programs and services to its students.~~

2363 ~~(c) In addition to the basic contract components described in subsection (b) of this~~
2364 ~~section, each compact shall contain at least the following elements:~~

2365 ~~(1) A determination of the mission of the institution which specifically addresses changes~~
2366 ~~necessary or expedient to accomplish the goals and objectives articulated by the state~~
2367 ~~and the appropriate statewide master plan;~~

2368 ~~(2) A detailed statement of how the compact is aligned with and will be implemented in~~
2369 ~~conjunction with the master plan of the institution;~~

2370 ~~(3) A comprehensive assessment of education needs within the institution's geographic~~
2371 ~~area of responsibility;~~

2372 ~~(4) A strategy to ensure access to comprehensive community and technical college and~~
2373 ~~workforce development services within each respective region of the state consistent~~
2374 ~~with the mission of the institution;~~

2375 ~~(5) Provision for collaboration and brokering of education services as necessary or~~
2376 ~~expedient to carry out the institutional mission and meet its objectives;~~

2377 ~~(6) Provision of student services at the optimum level to support the institutional mission~~
2378 ~~and to achieve state goals and objectives;~~

2379 ~~(7) Strategies for using existing infrastructure and resources within each region, where~~
2380 ~~feasible, to increase student access while controlling costs and maintaining academic~~
2381 ~~quality; and~~

2382 ~~(8) Other public policy objectives or initiatives adopted by the commission or council~~
2383 ~~pursuant to the intent and purposes of this article and section one-a, article one of this~~
2384 ~~chapter.~~

2385 ~~(d) Each institutional compact shall be updated bi-annually and shall follow the same~~
2386 ~~general guidelines contained in this section.~~

2387 ~~(e) Development and updating of the institutional compacts is subject to the following~~
2388 ~~conditions:~~

2389 ~~(1) The ultimate responsibility for developing and updating the compacts at the~~
2390 ~~institutional level resides with the board of advisors or the board of governors, as~~
2391 ~~appropriate. It is the responsibility of the commission or council to provide technical~~
2392 ~~assistance as requested and to assist the institution, with the exception of the exempted~~
2393 ~~schools, in development of the strategies to promote and support the institution pursuant~~
2394 ~~to subsection (b) of this section;~~

2395 ~~(2) The commission and the council each shall establish a date by which institutions,~~
2396 ~~with the exception of the exempted schools, under their respective jurisdictions shall~~
2397 ~~submit their compacts to the commission or council pursuant to the provisions of this~~

2398 ~~article. The date established by each state-level coordinating board shall apply uniformly~~
2399 ~~to all institutions under the jurisdiction of that coordinating board and shall meet the~~
2400 ~~following additional conditions:~~

2401 ~~(A) Allow sufficient time for careful analysis of the compacts by the central office staff~~
2402 ~~and for review by members of the commission or the council, as appropriate; and~~

2403 ~~(B) Allow sufficient time for the institutions to make necessary revisions to the compacts~~
2404 ~~as provided in this section.~~

2405 ~~(3) The commission shall review each compact from the institutions under its jurisdiction~~
2406 ~~and either confirm the compact or return it with specific comments for change or~~
2407 ~~improvement. The council shall review each compact from the institutions under its~~
2408 ~~jurisdiction and either adopt the compact or return it with specific comments for change~~
2409 ~~or improvement. The commission and council, respectively, shall continue this process~~
2410 ~~as long as each considers advisable;~~

2411 ~~(4) By May 1 bi-annually, if the institutional compact of any institution as presented by~~
2412 ~~that institution is not confirmed by the commission or adopted by the council, then the~~
2413 ~~commission or council is empowered and directed to develop and adopt the institutional~~
2414 ~~compact for the institution and the institution is bound by the compact so adopted; and~~

2415 ~~(5) As far as practicable, the commission and council each shall establish uniform~~
2416 ~~processes and forms for the development and submission of the institutional compacts~~
2417 ~~by the institutions under their respective jurisdictions, taking into consideration the~~
2418 ~~differences in institutional missions and objectives. As a part of this function, the~~
2419 ~~commission and council each shall organize the statements of legislative goals and~~
2420 ~~objectives contained in this article and section one-a, article one of this chapter in a~~

2421 ~~manner that facilitates the purposes therein.~~

2422 ~~(f) Assignment of geographic areas of responsibility.—~~

2423 ~~(1) The commission shall assign geographic areas of responsibility to the state~~
2424 ~~institutions of higher education under its jurisdiction, except for the exempted schools.~~
2425 ~~For institutions other than the exempted schools, the geographic areas of responsibility~~
2426 ~~are made a part of their institutional compacts to ensure that all areas of the state are~~
2427 ~~provided necessary programs and services to achieve state goals and objectives. The~~
2428 ~~commission and the council each shall develop data-based measures to determine the~~
2429 ~~extent to which institutions, with the exception of the exempted schools, under their~~
2430 ~~respective jurisdictions are providing higher education services aligned with state goals~~
2431 ~~and objectives and institutional missions within their geographic areas of responsibility.~~
2432 ~~This information shall be reported in the statewide report card established pursuant to~~
2433 ~~section eight of this article.~~

2434 ~~(2) The council shall assign geographic areas of responsibility to the state institutions of~~
2435 ~~higher education under its jurisdiction, including the administratively linked institution~~
2436 ~~known as Marshall Community and Technical College, the administratively linked~~
2437 ~~institution known as the Community and Technical College at West Virginia University~~
2438 ~~Institute of Technology and the regional campus known as West Virginia University at~~
2439 ~~Parkersburg.~~

2440 ~~(3) The geographic areas of responsibility for the state institutions of higher education~~
2441 ~~known as West Virginia School of Osteopathic Medicine, Marshall University and West~~
2442 ~~Virginia University are assigned by the Legislature.~~

2443 ~~(4) The benchmarks established in the institutional compacts include measures of~~

2444 ~~programs and services by geographic area throughout the assigned geographic area of~~
2445 ~~responsibility.~~

2446 ~~(g) The compacts shall contain benchmarks to be used to determine progress toward~~
2447 ~~meeting the objectives established in the compacts. The benchmarks shall meet the~~
2448 ~~following criteria:~~

2449 ~~(1) They shall be objective;~~

2450 ~~(2) They shall be directly linked to the objectives in the compacts;~~

2451 ~~(3) They shall be measured by the indicators described in subsection (h) of this section;~~
2452 ~~and~~

2453 ~~(4) Where applicable, they shall be used to measure progress in geographic areas of~~
2454 ~~responsibility.~~

2455 ~~(h) The rules required by subsection (c), section one of this article shall include~~
2456 ~~indicators which measure the degree to which the goals and objectives set forth in this~~
2457 ~~article and section one-a, article one of this chapter are being met by the institutions~~
2458 ~~under the jurisdiction of the commission and the council, respectively.~~

2459 ~~(1) The rules pertaining to benchmarks and indicators in effect for the commission and~~
2460 ~~the council on the effective date of this section remain in effect for the institutions under~~
2461 ~~their respective jurisdictions until amended, modified, repealed or replaced by the~~
2462 ~~commission OPE or the council, respectively, pursuant to the provisions of this article,~~
2463 ~~section six, article one of this chapter and article three-a, chapter twenty-nine-a of this~~
2464 ~~code.~~

2465 ~~(2) The rules shall set forth at least the following as pertains to all state institutions of~~

2466 ~~higher education, except the exempted schools:~~

2467 ~~(A) The indicators used to measure the degree to which the goals and objectives are~~
2468 ~~being met;~~

2469 ~~(B) Uniform definitions for the various data elements to be used in establishing the~~
2470 ~~indicators;~~

2471 ~~(C) Guidelines for the collection and reporting of data; and~~

2472 ~~(D) Sufficient detail within the benchmarks and indicators to provide the following~~
2473 ~~information:~~

2474 ~~(i) Measurable evidence that the pursuits of the institution are focused on the education~~
2475 ~~needs of the citizens of the state and are aligned with the objectives of the institutional~~
2476 ~~compacts and statewide master plans;~~

2477 ~~(ii) Delineation of the objectives and benchmarks for an institution so that the~~
2478 ~~commission or council can precisely measure the degree to which progress is being~~
2479 ~~made toward achieving the goals and objectives provided in this article and section one-~~
2480 ~~a, article one of this chapter: Provided, That the commission has no authority regarding~~
2481 ~~the objectives and benchmarks for exempted schools; and~~

2482 ~~(iii) Identification of specific objectives within the master plan or compact of an institution~~
2483 ~~that are not being met or toward which sufficient progress is not being made.~~

2484 ~~(3) In addition to any other requirement, the rule established by the council shall set forth~~
2485 ~~at least the following as pertains to community and technical college education:~~

2486 ~~(A) Benchmarks and indicators which are targeted to identify the following:~~

2487 ~~(i) The degree to which progress is being made by institutions toward meeting state~~
2488 ~~goals and objectives and the essential conditions for community and technical college~~
2489 ~~education pursuant to section three, article three-c of this chapter;~~

2490 ~~(ii) Information and data necessary to be considered by the council in making the~~
2491 ~~determination required by section three, article two-c of this chapter; and~~

2492 ~~(B) Sufficient detail within the benchmarks and indicators to provide clear evidence to~~
2493 ~~support an objective determination by the council that an institution's progress toward~~
2494 ~~achieving state goals and objectives and the essential conditions for community and~~
2495 ~~technical college education is so deficient that implementation of the provisions of~~
2496 ~~section four, article two-c of this chapter is warranted and necessary.~~

2497 ~~(i) The commission shall confirm the compacts developed for the institutions under its~~
2498 ~~jurisdiction, with the exception of the exempted schools, by the boards of governors or~~
2499 ~~the boards of advisors pursuant to this section and consistent with the powers and duties~~
2500 ~~prescribed in section four, article two-a of this chapter and section one, article six of this~~
2501 ~~chapter.~~

2502 ~~(ii) The council shall approve the compacts developed for the institutions under its~~
2503 ~~jurisdiction, by the boards of governors or the boards of advisors pursuant to this section~~
2504 ~~and consistent with the powers and duties prescribed in section four, article two-a of this~~
2505 ~~chapter and section one, article six of this chapter.~~

2506 25. West Virginia Code §18B-1D-8 is hereby amended as follows:

2507 **§18B-1D-8. Institutional and system report cards.**

2508 (a) The purpose of the institutional and statewide report cards is to make information
2509 available to parents, students, faculty, staff, state policymakers and the general public on

2510 the quality and performance of public higher education. The focus of the report cards is
2511 to determine annual progress of the ~~commission~~ OPE, the council and institutions under
2512 their respective jurisdictions toward achieving state goals and objectives identified in this
2513 article and section one-a, article one of this chapter and system goals and objectives
2514 contained in the statewide master plans of the ~~commission~~ and council created pursuant
2515 to section five of this article.

2516 (b) The information contained in the report cards shall be consistent and comparable
2517 between and among state institutions of higher education. If applicable, the information
2518 shall allow for easy comparison with higher education-related data collected and
2519 disseminated by the Southern Regional Education Board, the United States Department
2520 of Education and other education data-gathering and data-disseminating organizations
2521 upon which state policymakers frequently rely in setting policy.

2522 (c) The rules required by subsection (c), section one of this article shall provide for the
2523 collection, analysis and dissemination of information on the performance of the state
2524 institutions of higher education, including health sciences education, in relation to the
2525 findings, goals and objectives set forth in this article and section one-a, article one of this
2526 chapter and those contained in the statewide master plans of the ~~commission~~ and
2527 council developed pursuant to section five of this article.

2528 (1) The objective of this portion of the rule is to ensure that the Legislative Oversight
2529 Commission on Education Accountability and others identified in subsection (a) of this
2530 section are provided with full and accurate information while minimizing the institutional
2531 burden of recordkeeping and reporting.

2532 (2) This portion of the rule shall identify various indicators of student and institutional
2533 performance that, at a minimum, must be reported annually, set forth general guidelines

2534 for the collection and reporting of data and provide for the preparation, printing and
2535 distribution of report cards under this section.

2536 (d) The report cards shall be analysis-driven, rather than simply data-driven, and shall
2537 present information in a format that can inform education policymaking. They shall
2538 include an executive summary which outlines significant trends, identifies major areas of
2539 concern and discusses progress toward meeting state and system goals and objectives.
2540 They shall be brief and concise, reporting required information in nontechnical language.
2541 Any technical or supporting material to be included shall be contained in a separate
2542 appendix.

2543 (e) The statewide report card shall include the data for each separately listed, applicable
2544 indicator identified in the rule promulgated pursuant to subsection (c) of this section and
2545 the aggregate of the data for all public institutions of higher education.

2546 (f) The statewide report card shall be prepared using actual institutional, state, regional
2547 and national data, as applicable and available, indicating the present performance of the
2548 individual institutions, the governing boards and the state systems of higher education.
2549 Statewide report cards shall be based upon information for the current school year or for
2550 the most recent school year for which the information is available, in which case the year
2551 shall be clearly noted.

2552 ~~(g) The president or chief executive officer of each state institution of higher education~~
2553 ~~shall prepare and submit annually all requested data to the commission at the times~~
2554 ~~established by the commission.~~

2555 ~~(h_g) The higher education central office OPE staff, under the direction of the Vice~~
2556 ~~Chancellor for Administration, shall provide technical assistance to each institution and~~

2557 governing board in data collection and reporting and is responsible for assembling the
2558 statewide report card from information submitted by each governing board.

2559 (f_h) The statewide report card shall be completed and disseminated with copies to the
2560 Legislative Oversight Commission on Education Accountability prior to January 1 of each
2561 year and the staff of the ~~commission~~ OPE and the council shall prepare a report
2562 highlighting specifically the trends, progress toward meeting goals and objectives and
2563 major areas of concern for public higher education, including medical education, for
2564 presentation to the Legislative Oversight Commission on Education Accountability at the
2565 interim meetings in January, 2009, and annually thereafter.

2566 (j_i) For a reasonable fee, the ~~Vice Chancellor for Administration~~ OPE and the council
2567 shall make copies of the report cards, including any appendices of supporting material,
2568 available to any individual requesting them.

2569 26. West Virginia Code §18B-1D-8a is hereby amended as follows:

2570 **§18B-1D-8a. Modification to reporting requirements to the Legislative Oversight**
2571 **Commission on Education Accountability.**

2572 (a) Notwithstanding any other provisions of this code to the contrary, the following
2573 statutorily mandated reports are not required to be prepared and submitted annually to
2574 the Legislature but this information and data previously contained therein shall be
2575 combined with other reports in a manner that reduces the cost and increases the
2576 efficacy of those reports. This includes:

2577 (1) All personnel, classification, compensation and human resources reports set out in
2578 section four, article one-b of this chapter, section six, article two-b of this chapter and
2579 article nine-a of this chapter;

2580 (2) All capital appropriation requests, priorities and campus and state capital
2581 development plans set out in section four, article one-b of this chapter, section six, article
2582 two-b of this chapter and article nineteen of this chapter;

2583 (3) All academic related matters and reports including those detailing institutional
2584 reauthorization at section seven, article four of this chapter; training of institutional
2585 Boards of Governors set out in section nine, article one-d of this chapter and section
2586 one, article ten of this chapter dealing with institutional compliance with tuition and fee
2587 increases;

2588 (4) All financial aid reports including PROMISE, HEAPS, the Higher Education Grant
2589 Program, the Nursing Scholarship Program, the Underwood-Smith Teacher Scholarship
2590 Program and others set out in chapter eighteen-c of this code.

2591 (b) In order to create more efficiency, reporting deadlines of statutorily or rule mandated
2592 reports may be altered, as needed by the ~~Commission~~ Legislative Oversight
2593 Commission on Education Accountability without a statutory or rule-making change,;
2594 Provided, That the reports are always provided within any given calendar year.

2595 27. West Virginia Code §18B-1D-9 is hereby amended as follows:

2596 **§18B-1D-9. ~~Commission,~~ OPE, council and institutional governing board training**
2597 **and development; training and development requirements, applicability and**
2598 **exceptions.**

2599 (a) The ~~commission~~ OPE and council, either jointly or separately, shall coordinate
2600 periodic training and development opportunities for members of the ~~commission,~~ OPE,
2601 council and institutional governing boards as provided in this section.

2602 The training and development shall address the following topics:

2603 (1) State goals, objectives and priorities for higher education;

2604 (2) The accountability system for higher education set forth in this article;

2605 (3) The general powers and duties of members; and

2606 (4) Ethical considerations arising from board membership.

2607 (b) Training and development is required as follows:

2608 (1) A member newly appointed to the ~~commission~~, OPE, council or a governing board
2609 shall complete three hours of training and development by the end of the first fiscal year
2610 of service if the appointment is made in the first half of a fiscal year. If the appointment is
2611 made in the second half of a fiscal year the member shall complete three hours of
2612 training and development by the end of the first half of the second fiscal year.

2613 (2) With the exception of the ex officio members of the commission OPE and the council
2614 and the student member of a governing board, each member shall complete at least six
2615 hours of training and development related to his or her duties within two fiscal years of
2616 beginning service and within every two fiscal years of service thereafter.

2617 (c) Annually, by July 31, the chair of the ~~commission~~, OPE, council and each governing
2618 board shall certify to the ~~commission~~, OPE or council, as appropriate, the number of
2619 hours of training and development that each member received during the preceding
2620 fiscal year.

2621 (d) If the certification indicates that a board member has not completed the training and
2622 development required by this section, the ~~commission~~, OPE or council, as appropriate,
2623 shall send a notice to the affected board member, and to the Governor and the
2624 Secretary of State or to the institutional appointing entity that the board member is

2625 disqualified from continued service notwithstanding the provisions of sections five and
2626 six, article six, chapter six of this code. The ~~commission~~ OPE or council, as appropriate,
2627 shall request the Governor or appointing entity to appoint a replacement for that board
2628 member.

2629 (e) Annually, by September 30, the ~~commission~~ OPE and council shall report to the
2630 Legislative Oversight Commission on Education Accountability on the training and
2631 development that members of the ~~commission~~ OPE and council and the governing
2632 boards under their respective jurisdictions have received during the preceding fiscal
2633 year. This information shall be included in the institutional and statewide report cards
2634 provided in section eight of this article.

2635 (f) As used in this section, "member" means all members of the ~~commission~~ OPE,
2636 council and the governing boards unless a specific exception is provided in this section.

2637 28. West Virginia Code §18B-1D-10 is hereby amended as follows:

2638 **§18B-1D-10. State data sharing compact; legislative intent; findings; definitions.**

2639 (a) The intent of the Legislature in enacting this section is to direct the ~~commission~~ OPE,
2640 council and State Board of Education to enter into a state compact, consistent with the
2641 provisions of section six of this article, on or before July 1, ~~2009~~ 2019, to develop and
2642 maintain a longitudinal education data system and to share educational information.

2643 (b) The Legislature makes the following findings:

2644 (1) Sound data collection, reporting and analysis are critical to building an education
2645 system capable of ensuring that all West Virginia students are adequately prepared for
2646 college and the global workforce. Elementary schools, middle schools, secondary
2647 schools and higher education institutions can improve instructional and educational

2648 decision-making using data that are collected and made available to them.

2649 (2) State education policymaking benefits from partnerships between state education
2650 agencies and entities with expertise in education research. It is beneficial for West
2651 Virginia to establish systems and processes that permit qualified researchers to assist
2652 with state evaluation and research functions in a manner that is consistent with privacy
2653 protection laws.

2654 (3) West Virginia is committed to establishing and maintaining a longitudinal student unit
2655 record data system that educators and policymakers can use to analyze and assess
2656 student progress beginning with early learning programs and continuing through post-
2657 secondary education and into employment. The ~~commission~~ Higher Education Planning
2658 Commission, council and State Board of Education have designed, built and deployed
2659 some of the fundamental components of a longitudinal data system and have engaged
2660 in extensive efforts to link and use available education data effectively. Now, it is
2661 necessary to integrate and manage the various education data components in a
2662 cooperative manner to establish a data-driven, decision-making environment for this
2663 state's education system.

2664 (4) Students will achieve improved learning outcomes because of the longitudinal data
2665 system established through the state compact mandated by this section.

2666 (6) State use and management of education data shall be in accordance with all legal
2667 requirements protecting student privacy and shall protect personal information from
2668 intentional or accidental release to unauthorized persons and from intentional or
2669 accidental use for unauthorized purposes.

2670 (c) Definitions:

2671 (1) "Longitudinal data system" means a student unit record data system that links
2672 student records beginning with early learning programs and continuing through post-
2673 secondary education, entry into the workforce and beyond. The system may consist of
2674 separate student unit record systems integrated through agreement and data transfer
2675 mechanisms.

2676 (2) "Privacy protection laws" means the federal Family Educational Rights and Privacy
2677 Act of 1974 (20 U.S.C. 1232g) and any other state or federal laws relating to the
2678 confidentiality and protection of personally identifiable information.

2679 (3) "Research organization" means a governmental entity, institution of higher education,
2680 public policy organization or other person or entity conducting educational research that
2681 meets the following conditions:

2682 (i) Qualified to perform educational research and protect the privacy of student data;

2683 (ii) Seeks to perform research for a noncommercial purpose authorized by privacy
2684 protection laws; and

2685 (iii) Agrees to perform the research pursuant to a written agreement meeting the
2686 requirements of privacy protection laws and best research practices.

2687 (d) The state data-sharing compact entered into by the ~~commission~~ OPE, council and
2688 State Board of Education shall contain the following:

2689 (1) A plan to establish and maintain a longitudinal data system that links early learning,
2690 elementary, middle and secondary school student unit records with higher education
2691 institution student unit records;

2692 (2) A plan to establish a data warehouse that integrates data from multiple student unit

2693 record systems and supports all of the uses and functions of the longitudinal data
2694 system;

2695 (3) A list of areas for collaborative research and a preliminary plan for conducting that
2696 research;

2697 (4) A system for entering into data sharing arrangements with each other and with
2698 research organizations consistent with subsection (f) of this section; and

2699 (5) A provision that allows another party to the compact to review any draft report or
2700 study generated using that party's data at least ten days before the report or study is
2701 released publicly. During that ten day period, each party shall be given the opportunity to
2702 submit comments regarding the accuracy, conclusions and recommendations of the
2703 report or study.

2704 (e) To facilitate implementation of the requirements of this section:

2705 (1) The ~~commission~~ OPE, council and State Board of Education are authorized to
2706 disclose data to the longitudinal data system and to each other consistent with the
2707 purposes of this section;

2708 (2) With the assistance of the state Board of Education, the ~~commission~~ OPE, council
2709 and state institutions of higher education shall collect the state Board of Education's
2710 unique identifier for all students who have attended public schools in West Virginia to
2711 facilitate better matching of student unit record data.

2712 (3) The ~~commission~~ OPE, council and State Board of Education shall collect, use,
2713 maintain, disclose and share data in accordance with personal privacy laws and shall
2714 develop security measures and procedures that protect personal information from
2715 intentional or accidental release to unauthorized persons and from intentional or

2716 accidental use for unauthorized purposes.

2717 (f) A data sharing arrangement entered into with a research organization pursuant to this
2718 section shall meet the following criteria:

2719 (1) Permitted by and undertaken in accordance with privacy protection laws;

2720 (2) Receives prior approval from the state Superintendent of Schools or designee, the
2721 Chancellor for Higher Education or designee, and the Chancellor for Community and
2722 Technical College Education or designee, as appropriate, if data from that entity are
2723 being utilized in the research;

2724 (3) Prohibits the personal identification of any person by individuals other than
2725 authorized representatives of the research organization who have legitimate interests in
2726 the information;

2727 (4) Ensures the destruction or return of the data when no longer needed for the
2728 authorized purposes under the data sharing arrangement;

2729 (5) Performed pursuant to a written agreement with the research organization that does
2730 the following:

2731 (A) Specifies the purpose, scope and duration of the data sharing arrangement;

2732 (B) Requires the recipient of the data to use personally identifiable information from
2733 education records only to meet the purpose or purposes of the data sharing
2734 arrangement stated in the written agreement;

2735 (C) Describes specific data access, use and security restrictions that the recipient will
2736 undertake; and

2737 (D) Contains such other terms and provisions as the ~~commission~~ OPE, council and State
2738 Board of Education, as appropriate, consider necessary or appropriate.

2739 (g) As a condition of participating in state-level financial aid programs provided for in
2740 chapter eighteen-c of this code, the ~~commission~~ OPE may require nonpublic institutions
2741 of higher education to provide data for the longitudinal data system and data warehouse.

2742 29. West Virginia Code §18B-1F-1 is hereby amended as follows:

2743 **~~§18B-1F-1. Legislative findings and purpose.~~**

2744 ~~(a) The Legislature finds that economic development in West Virginia depends in part on~~
2745 ~~collaborations developed between higher education and businesses and industry,~~
2746 ~~particularly in the advancement of new and emerging technologies. It is in the best~~
2747 ~~interests of the citizens of the state to implement programs which promote this research~~
2748 ~~and contribute to the general economic welfare.~~

2749 ~~(b) The Legislature further finds that the transfer of property to the Commission to~~
2750 ~~establish the West Virginia Education, Research and Technology Park created a new~~
2751 ~~and unprecedented opportunity to promote research and development in the state. An~~
2752 ~~efficiently managed Technology Park will encourage private sector participation in and~~
2753 ~~support for research and economic development and will facilitate collaboration among~~
2754 ~~the commission, the doctoral institutions and their research corporations.~~

2755 ~~(c) It is the responsibility of the commission to ensure that the day to day operations of~~
2756 ~~the Technology Park are carried out effectively and efficiently in order to provide the~~
2757 ~~greatest investment return to the people of West Virginia. To this end the Legislature~~
2758 ~~finds that a mechanism is needed to simplify and expedite property management and~~
2759 ~~purchasing of equipment, material and personal services.~~

2760 ~~(d) Therefore, the purpose of this article is to provide the commission corporation with~~
2761 ~~the authority necessary to carry out its responsibilities related to the operation of the~~
2762 ~~Technology Park. The commission is authorized to enter into agreements and other~~
2763 ~~contractual relationships with an affiliated corporation in order to achieve maximum~~
2764 ~~efficiency in managing the Technology Park.~~

2765 30. West Virginia Code §18B-1F-2 is hereby amended as follows:

2766 **~~§18B-1F-2. Definitions.~~**

2767 ~~The following words used in this article have the meanings ascribed to them in this~~
2768 ~~section unless the context clearly indicates a different meaning:~~

2769 ~~(a) "Affiliated corporation" or "corporation" means a corporation which meets the~~
2770 ~~essential criteria prescribed in section three of this article and whose purpose is to~~
2771 ~~provide management services to the commission in carrying out the day to day~~
2772 ~~operations of the Technology Park;~~

2773 ~~(b) "Agreement" means an agreement or contractual relationship entered into between~~
2774 ~~the commission and an affiliated corporation pursuant to the provisions of this article;~~

2775 ~~(c) "Board of directors" means the governing body of a corporation created pursuant to~~
2776 ~~section three of this article;~~

2777 ~~(d) "Doctoral institution" means Marshall University or West Virginia University;~~

2778 ~~(e) "Executive director" means the chief executive officer of an affiliated corporation~~
2779 ~~employed pursuant to section five of this article;~~

2780 ~~(f) "Potential membership" means the total number of members who comprise the board~~
2781 ~~of directors when all membership seats are filled;~~

2782 ~~(g) "Private sector member" means a director of an affiliated corporation who is not an~~
2783 ~~employee of the commission nor of any entity bearing a direct or indirect relationship to~~
2784 ~~the commission OPE;~~

2785 ~~(h) "Research corporation" means a corporation established with respect to Marshall~~
2786 ~~University or West Virginia University pursuant to section three, article twelve of this~~
2787 ~~chapter; and~~

2788 ~~(i) "Technology Park" means the state-owned West Virginia Education, Research and~~
2789 ~~Technology Park affiliated with the commission.~~

2790 31. West Virginia Code §18B-1F-3 is hereby amended as follows:

2791 ~~**§18B-1F-3. Commission authorized to contract with corporation; corporation to**~~
2792 ~~**meet essential criteria; corporation membership and organization; financial**~~
2793 ~~**requirements.**~~

2794 ~~(a) The commission is authorized to enter into agreements and any other contractual~~
2795 ~~relationships with an affiliated corporation formed as set forth in this article.~~

2796 ~~(b) The affiliated corporation shall meet the following essential criteria:~~

2797 ~~(1 a) Corporation status. -- The corporation is organized as a non-profit, non-stock~~
2798 ~~corporation under the general corporation laws of the state exclusively for charitable,~~
2799 ~~educational or scientific purposes within the meaning of section 501(c) of the Internal~~
2800 ~~Revenue Code of 1986, as amended.~~

2801 ~~(2 b) Corporation membership, meetings, officers. --~~

2802 ~~(A 1) Members of the board of directors of the affiliated corporation serve terms as~~
2803 ~~prescribed in the bylaws of the corporation and are selected by the commission in~~

2804 ~~consultation with the chancellor OPE. The commission OPE shall make all appointments~~
2805 ~~to the board of directors by majority vote of its members and shall include the individual~~
2806 ~~votes as a part of the minute record.~~

2807 ~~(B) Private sector members shall constitute a majority of the potential membership of the~~
2808 ~~board of directors. Vacancies shall be filled in such a way that the majority status of~~
2809 ~~private sector membership is maintained.~~

2810 ~~(C) By July 1, 2011, and at least biennially thereafter, the board of directors shall elect a~~
2811 ~~chair from among its members.~~

2812 32. West Virginia Code §18B-1F-4 is hereby amended as follows:

2813 **~~§18B-1F-4. Powers and duties of board of directors and corporation.~~**

2814 ~~(a) The primary responsibility of the corporation is to manage the day-to-day operations~~
2815 ~~of the technology park through collaboration agreements with the commission. To that~~
2816 ~~end, the board of directors has the following powers and duties:~~

2817 ~~(1) To employ an executive director subject to the provisions of section five of this article;~~

2818 ~~(2) To approve employment of other staff recommended by the executive director as~~
2819 ~~being necessary and appropriate to carry out the purposes of this article and subject to~~
2820 ~~agreements with the commission;~~

2821 ~~(3) To serve as fiscal agent and provide additional services, including, but not limited to,~~
2822 ~~property management, human resources management and purchasing;~~

2823 ~~(4) To meet as a governing body. A corporation created under this article is exempt from~~
2824 ~~the provisions of section three, article nine-a, chapter six of this code and from the~~
2825 ~~provisions of article one, chapter twenty-nine-b of this code;~~

2826 ~~(5) To receive, purchase, hold, lease, use, sell and dispose of real and personal property~~
2827 ~~of all classes, subject to the provisions of subdivision (8) of this subsection and section~~
2828 ~~eight of this article;~~

2829 ~~(6) To receive from any source whatsoever grants to be expended in accomplishing the~~
2830 ~~objectives of this article;~~

2831 ~~(7) To receive from any source whatsoever aid or contributions of money, property or~~
2832 ~~other things of value to be held, used and applied only for the purposes for which the aid~~
2833 ~~or contributions may be made;~~

2834 ~~(8) To accept and expend any gift, grant, contribution, bequest, endowment or other~~
2835 ~~money for the purposes of this article. Any transfer of endowment or other assets by the~~
2836 ~~commission to the corporation or by the corporation to the commission for management~~
2837 ~~shall be formalized in a memorandum of agreement to assure, at a minimum, that any~~
2838 ~~restrictions governing the future disposition of funds are preserved. The commission~~
2839 ~~may not transfer ownership of the technology park property to the corporation;~~

2840 ~~(9) To make, amend and repeal bylaws, rules and its governing documents consistent~~
2841 ~~with the provisions of this article to effectuate the purpose and scope of the corporation;~~

2842 ~~(10) To alter the purpose or scope of the corporation; and~~

2843 ~~(11) To delegate the exercise of any of its powers except for the power to approve~~
2844 ~~budgets to the executive director, subject to the directions and limitations contained in its~~
2845 ~~governing documents.~~

2846 ~~(b) In addition to the powers and duties provided for in this section and any other powers~~
2847 ~~and duties that may be assigned to it by law or agreement, the corporation has other~~
2848 ~~powers and duties necessary to accomplish the objectives of this article or as provided~~

2849 ~~by law.~~

2850 33. West Virginia Code §18B-1F-5 is hereby amended as follows:

2851 **~~§18B-1F-5. Appointment of executive director; qualifications.~~**

2852 ~~(a) The commission shall set the qualifications for the position of executive director and~~
2853 ~~shall conduct a thorough search for qualified candidates. A qualified candidate is one~~
2854 ~~who meets at least the following criteria:~~

2855 ~~(1) Possesses a broad understanding of the relationship between public and private~~
2856 ~~sector research and the need for cooperation and collaboration among the commission~~
2857 ~~and the research corporations;~~

2858 ~~(2) Holds at least a bachelor's degree in a field related to the duties and responsibilities~~
2859 ~~of the position of executive director;~~

2860 ~~(3) Demonstrates strong communication skills and the ability to work with all types of~~
2861 ~~businesses and industry, government agencies and higher education institutions; and~~

2862 ~~(4) Possesses other skills, qualifications or attributes as the commission considers~~
2863 ~~appropriate or desirable.~~

2864 ~~(b) The commission shall select the executive director for the corporation and may not~~
2865 ~~delegate this duty to the chancellor. The executive director may have a dual appointment~~
2866 ~~with the commission, but may not be a corporation director.~~

2867 ~~(1) The commission shall appoint the executive director by majority vote of its members~~
2868 ~~and shall include the vote as a part of the minute record.~~

2869 ~~(2) The executive director shall inform the board of directors and the commission~~

2870 ~~annually of his or her employment status with any other institution, agency or~~
2871 ~~organization.~~

2872 ~~(c) The day to day operations of the corporation are under the control and supervision of~~
2873 ~~the executive director. With the approval of the board of directors the executive director~~
2874 ~~may employ staff as necessary to carry out the corporation's purposes as set forth in this~~
2875 ~~article.~~

2876 34. West Virginia Code §18B-1F-6 is hereby amended as follows:

2877 **~~§18B-1F-6. Agreements; required provisions.~~**

2878 ~~(a) The commission may enter into agreements or other contractual relationships with a~~
2879 ~~corporation that meets the conditions set forth in section three of this article. Any~~
2880 ~~agreement shall specify that the corporation is accountable to the commission for the~~
2881 ~~efficient operations of the Technology Park.~~

2882 ~~(b) On the effective date of the agreement, the corporation becomes the fiscal agent for~~
2883 ~~operations of the Technology Park on behalf of the commission pursuant to terms of the~~
2884 ~~agreement.~~

2885 ~~(c) If an agreement is terminated, the funds, contributions or grants paid or held by the~~
2886 ~~corporation and not encumbered or committed prior to termination shall be distributed as~~
2887 ~~provided for in the agreement.~~

2888 ~~(d) If made part of the agreement, the corporation may use services of both corporation~~
2889 ~~employees and personnel of the commission. The corporation may pay the costs~~
2890 ~~incurred by the commission, including personnel funded on grants and contracts, fringe~~
2891 ~~benefits of personnel funded on grants and contracts, administrative support costs and~~
2892 ~~other costs which may require reimbursement. The corporation may include as costs any~~

2893 ~~applicable overhead and fringe benefit assessments necessary to recover the costs~~
2894 ~~expended by the commission, pursuant to the terms of the agreement, and the~~
2895 ~~commission may be reimbursed for expenses incurred by it pursuant to the agreement.~~

2896 35. West Virginia Code §18B-1F-7 is hereby amended as follows:

2897 **§18B-1F-7. Audits required; financial reports; conflicts of interest.**

2898 ~~(a) The financial statements of the corporation shall be audited annually by an~~
2899 ~~independent certified public accountant or firm. Within thirty days of completion, the~~
2900 ~~financial audit report shall be presented to the corporation's board of directors for~~
2901 ~~approval, after which a copy of the financial audit and required statements shall be~~
2902 ~~submitted to the commission.~~

2903 ~~(b) Notwithstanding any other provision of this code to the contrary, any officer or~~
2904 ~~employee of the commission, who is not the executive director of the corporation, may~~
2905 ~~hold an appointment as a member and as an officer of the corporation board of directors.~~

2906 36. West Virginia Code §18B-1F-8 is hereby amended as follows:

2907 **~~§18B-1F-8. No waiver of sovereign immunity; not obligation of the state.~~**

2908 ~~(a) Nothing contained in this article waives or abrogates in any way the sovereign~~
2909 ~~immunity of the state or deprives the commission or any officer or employee of the~~
2910 ~~commission of sovereign immunity.~~

2911 ~~(b) Obligations of the board of directors or the corporation do not constitute debts or~~
2912 ~~obligations of the commission or the state.~~

2913 37. West Virginia Code §18B-1F-9 is hereby amended as follows:

2914 ~~§18B-1F-9. Legislative findings and intent; memorandum of agreement required;~~
2915 ~~terms and conditions; reports.~~

2916 ~~(a) The Legislature finds that the Technology Park is a diversified, multi-tenant research,~~
2917 ~~development and commercialization park focused on energy, chemicals and other~~
2918 ~~sciences and technologies for the advancement of education and economic~~
2919 ~~development in West Virginia. The areas of primary research and development include~~
2920 ~~energy, chemicals and materials, and biotechnology. It is the intent of the Legislature to~~
2921 ~~provide the commission corporation with the tools needed to manage the Technology~~
2922 ~~Park and facilitate the translation of state investment dollars in higher education and~~
2923 ~~research into business and economic growth that will provide tangible benefits for the~~
2924 ~~citizens of the state.~~

2925 ~~(b) To achieve the goals set forth in this section, it is essential that the commission~~
2926 ~~include in its research and development efforts the talents and expertise available at the~~
2927 ~~doctoral institutions and their research corporations. Therefore, by July 1, 2011, the~~
2928 ~~commission shall enter into a memorandum of agreement with the research corporations~~
2929 ~~to delineate the role each party will play in furthering the goals of research and economic~~
2930 ~~development as set forth in this article. The agreement shall focus on collaboration and~~
2931 ~~cooperation among the commission and the two research corporations.~~

2932 ~~(1) The agreement is not effective until all parties have agreed to the included terms and~~
2933 ~~conditions.~~

2934 ~~(2) The commission shall file a report, including a copy of the completed agreement and~~
2935 ~~any relevant documents, with the Joint Committee on Government and Finance and the~~
2936 ~~Legislative Oversight Commission on Education Accountability by July 15, 2011.~~

2937 ~~(3) The agreement may be amended by mutual consent of the parties. Within fifteen~~
2938 ~~days of the date a new agreement is signed, the commission shall file a report as~~
2939 ~~provided in subdivision (2) of this subsection.~~

2940 38. West Virginia Code §18B-1F-10 is hereby amended as follows:

~~§18B-1F-10. Department of commerce to study and report relating to research and technology parks.~~

2941 ~~The West Virginia Development Office shall research, investigate and make~~
2942 ~~recommendations relating to advancing research activities, economic development and~~
2943 ~~job creation relating to foundations and private entities, including the I-79 Technology~~
2944 ~~Park, who focus on research and job development and that receive or have received~~
2945 ~~since July 1, 2012, appropriation support from the State of West Virginia. The~~
2946 ~~Development Office shall submit a report of its investigation and findings to the Governor~~
2947 ~~and the Legislature on or before December 31, 2017.~~

2948 39. West Virginia Code §18B-2A-1 is hereby amended as follows:

2949 **§18B-2A-1. Findings; composition of boards; terms and qualifications of**
2950 **members; vacancies; eligibility for reappointment.**

2951 (a) Findings. –

2952 The Legislature finds that the State of West Virginia is served best when the
2953 membership of each governing board includes the following:

2954 (1) The academic expertise and institutional experience of faculty members and a
2955 student of the institution governed by the board;

2956 (2) The technical or professional expertise and institutional experience of a classified
2957 employee of the institution governed by the board;

2958 (3) An awareness and understanding of the issues facing the institution governed by the
2959 board; and

2960 (4) The diverse perspectives that arise from a membership that is balanced in terms of
2961 gender and varied in terms of race and ethnic heritage.

2962 (b) Boards of governors established. –

2963 A board of governors is continued at each of the following institutions: Bluefield State
2964 College, Blue Ridge Community and Technical College, Bridgemont Community and
2965 Technical College, Concord University, Eastern West Virginia Community and Technical
2966 College, Fairmont State University, Glenville State College, Kanawha Valley Community
2967 and Technical College, Mountwest Community and Technical College, Marshall
2968 University, New River Community and Technical College, Pierpont Community and
2969 Technical College, Shepherd University, Southern West Virginia Community and
2970 Technical College, West Liberty University, West Virginia Northern Community and
2971 Technical College, the West Virginia School of Osteopathic Medicine, West Virginia
2972 State University, West Virginia University and West Virginia University at Parkersburg.

2973 (c) Board membership. –

2974 (1) An appointment to fill a vacancy on the board or reappointment of a member who is
2975 eligible to serve an additional term is made in accordance with the provisions of this
2976 section.

2977 (2) The Board of Governors for Marshall University consists of sixteen persons. The
2978 Board of Governors for West Virginia University consists of seventeen persons. The
2979 boards of governors of the other state institutions of higher education consist of twelve
2980 persons.

- 2981 (3) Each board of governors includes the following members:
- 2982 (A) A full-time member of the faculty with the rank of instructor or above duly elected by
2983 the faculty of the respective institution;
- 2984 (B) A member of the student body in good academic standing, enrolled for college credit
2985 work and duly elected by the student body of the respective institution; and
- 2986 (C) A member from the institutional classified employees duly elected by the classified
2987 employees of the respective institution;
- 2988 (4) For the Board of Governors at Marshall University, thirteen lay members appointed
2989 by the Governor, by and with the advice and consent of the Senate, pursuant to this
2990 section;
- 2991 (5) For the Board of Governors at West Virginia University, twelve lay members
2992 appointed by the Governor, by and with the advice and consent of the Senate, pursuant
2993 to this section, and additionally:
- 2994 (A) The Chairperson of the Board of Visitors of West Virginia University Institute of
2995 Technology;
- 2996 (B) A full-time faculty member representing the extension service at the institution or a
2997 full-time faculty member representing the health sciences, selected by the faculty
2998 senate.(6) For each board of governors of the other state institutions of higher education,
2999 nine lay members appointed by the Governor, by and with the advice and consent of the
3000 Senate, pursuant to this section.
- 3001 (A) Of the nine members appointed by the Governor, no more than five may be of the
3002 same political party. Of the thirteen members appointed by the Governor to the

3003 governing board of Marshall University, no more than eight may be of the same political
3004 party. Of the twelve members appointed by the Governor to the governing board of West
3005 Virginia University, no more than seven may be of the same political party.

3006 (B) Of the nine members appointed by the Governor, at least five shall be residents of
3007 the state. Of the thirteen members appointed by the Governor to the governing board of
3008 Marshall University, at least eight shall be residents of the state. Of the twelve members
3009 appointed by the Governor to the governing board of West Virginia University, at least
3010 seven shall be residents of the state.

3011 (7) In making lay appointments, the Governor shall consider the institutional mission and
3012 membership characteristics including the following:

3013 (A) The need for individual skills, knowledge and experience relevant to governing the
3014 institution;

3015 (B) The need for awareness and understanding of institutional problems and priorities,
3016 including those related to research, teaching and outreach;

3017 (C) The value of gender, racial and ethnic diversity; and

3018 (D) The value of achieving balance in gender and diversity in the racial and ethnic
3019 characteristics of the lay membership of each board.

3020 (d) Board member terms. –

3021 (1) The student member serves for a term of one year. Each term begins on July 1.

3022 (2) The faculty member serves for a term of two years. Each term begins on July 1.

3023 Faculty members are eligible to succeed themselves for three additional terms, not to
3024 exceed a total of eight consecutive years.

3025 (3) The member representing classified employees serves for a term of two years. Each
3026 term begins on July 1. Members representing classified employees are eligible to
3027 succeed themselves for three additional terms, not to exceed a total of eight consecutive
3028 years.

3029 (4) The appointed lay citizen members serve terms of four years each and are eligible to
3030 succeed themselves for no more than one additional term, except that citizen members
3031 who are appointed to fill unexpired terms are eligible to succeed themselves for two full
3032 terms after completing an unexpired term.

3033 (5) A vacancy in an unexpired term of a member shall be filled for the unexpired term
3034 within thirty days of the occurrence of the vacancy in the same manner as the original
3035 appointment or election. Except in the case of a vacancy, all elections are held and all
3036 appointments are made no later than June 30 preceding the commencement of the term.
3037 Each board of governors shall elect one of its appointed lay members to be chairperson
3038 in June of each year. A member may not serve as chairperson for more than four
3039 consecutive years.

3040 (6) The appointed members of the boards of governors serve staggered terms of up to
3041 four years except that four of the initial appointments to the governing boards of
3042 community and technical colleges that became independent July 1, 2008, are for terms
3043 of two years and five of the initial appointments are for terms of four years.

3044 (e) Board member eligibility, expenses. –

3045 (1) A person is ineligible for appointment to membership on a board of governors of a
3046 state institution of higher education under the following conditions:

3047 (A) For a baccalaureate institution or university, a person is ineligible for appointment

3048 who is an officer, employee or member of any other board of governors; an employee of
3049 any institution of higher education; an officer or member of any political party executive
3050 committee; the holder of any other public office or public employment under the
3051 government of this state or any of its political subdivisions; an employee of any affiliated
3052 research corporation created pursuant to article twelve of this chapter; an employee of
3053 any affiliated foundation organized and operated in support of one or more state
3054 institutions of higher education; or a member of the council or ~~commission~~ OPE. This
3055 subsection does not prevent the representative from the faculty, classified employees,
3056 students or the superintendent of a county board of education from being members of
3057 the governing boards.

3058 (B) For a community and technical college, a person is ineligible for appointment who is
3059 an officer, employee or member of any other board of governors; a member of a board
3060 of visitors of any public institution of higher education; an employee of any institution of
3061 higher education; an officer or member of any political party executive committee; the
3062 holder of any other public office, other than an elected county office, or public
3063 employment, other than employment by the county board of education, under the
3064 government of this state or any of its political subdivisions; an employee of any affiliated
3065 research corporation created pursuant to article twelve of this chapter; an employee of
3066 any affiliated foundation organized and operated in support of one or more state
3067 institutions of higher education; or a member of the council or ~~commission~~ OPE. This
3068 subsection does not prevent the representative from the faculty, classified employees or
3069 students from being members of the governing boards.

3070 (2) Before exercising any authority or performing any duties as a member of a governing
3071 board, each member shall qualify as such by taking and subscribing to the oath of office
3072 prescribed by section five, article IV of the Constitution of West Virginia and the

3073 certificate thereof shall be filed with the Secretary of State.

3074 (3) A member of a governing board appointed by the Governor may not be removed
3075 from office by the Governor except for official misconduct, incompetence, neglect of duty
3076 or gross immorality and then only in the manner prescribed by law for the removal of the
3077 state elective officers by the Governor.

3078 (4) The members of the board of governors serve without compensation, but are
3079 reimbursed for all reasonable and necessary expenses actually incurred in the
3080 performance of official duties under this article upon presentation of an itemized sworn
3081 statement of expenses.

3082 (5) The president of the institution shall make available resources of the institution for
3083 conducting the business of its board of governors. All expenses incurred by the board of
3084 governors and the institution under this section are paid from funds allocated to the
3085 institution for that purpose.

3086 40. West Virginia Code §18B-2A-3 is hereby amended as follows:

3087 **§18B-2A-3. Oversight of governing boards; promulgation of rules; data collection**
3088 **and dissemination.**

3089 (a) The governing boards of community and technical colleges are subject to the
3090 oversight of the ~~commission or the council, as appropriate, except that the authority of~~
3091 ~~the commission relating to the exempted schools is limited to the specific authorities~~
3092 ~~granted under this chapter.~~

3093 (b) The ~~Chancellor for Higher Education and the Chancellor for Community and~~
3094 ~~Technical College Education, under the supervision of their respective boards the~~
3095 council board, are is responsible for the coordination of policies, purposes and rules of

3096 the governing boards ~~except the exempted schools~~ of community and technical colleges
3097 and shall provide for and facilitate sufficient interaction among the governing boards and
3098 between the governing boards and the State Board of Education to meet the goals and
3099 objectives provided in the compacts and in section one-a, article one and article one-d of
3100 this chapter.

3101 (c) The governing boards of community and technical colleges and the State Board of
3102 Education shall provide all information requested by the ~~commission~~ and the council,
3103 whether the request is made separately or jointly, in an appropriate format and in a
3104 timely manner.

3105 (d)(1) Each governing board shall cooperate with the West Virginia Network for
3106 Educational Telecomputing (WVNET) in designing appropriate interfaces with the
3107 databases of institutions under its jurisdiction and shall grant WVNET direct access to
3108 these databases.

3109 (2) WVNET, on behalf of the ~~commission~~ OPE, the council or both, shall generate
3110 reports from the data accessed for the purposes set forth in section five, article one-a
3111 and sections eight and ten, article one-d of this chapter.

3112 (3) All data accessed or received from an institution shall be treated in a manner
3113 consistent with the privacy protections outlined in section ten, article one-d of this
3114 chapter.

3115 41. West Virginia Code §18B-2A-4 is hereby amended as follows:

3116 **§18B-2A-4. Powers and duties of governing boards generally.**

3117 Each governing board separately has the following powers and duties:

3118 (a) Determine, control, supervise and manage the financial, business and education
3119 policies and affairs of the state institution of higher education under its jurisdiction;

3120 (b) Develop a master plan for the institution under its jurisdiction.

3121 (1) The ~~ultimate~~ responsibility for developing and updating each master plan at the
3122 institution resides with the governing board, ~~but the ultimate responsibility for approving~~
3123 ~~the final version of each master plan, including periodic updates, resides with the~~
3124 ~~commission or council, as appropriate. Provided, That commission approval is not~~
3125 ~~required for master plans of exempted schools.~~

3126 (2) Each master plan shall include, but is not limited to, the following:

3127 (A) A detailed demonstration of how the master plan will be used to meet the goals,
3128 objectives and priorities of the compact;

3129 (B) A well-developed set of goals, objectives and priorities outlining missions, degree
3130 offerings, resource requirements, physical plant needs, personnel needs, enrollment
3131 levels and other planning determinates and projections necessary in a plan to assure
3132 that the needs of the institution's area of responsibility for a quality system of higher
3133 education are addressed;

3134 (C) Documentation showing how the governing board involved the ~~commission or~~
3135 ~~council, as appropriate, constituency groups, clientele of the institution and the general~~
3136 ~~public in the development of all segments of the master plan.~~

3137 (3) The plan shall be established for periods of not fewer than three nor more than five
3138 years and shall be revised periodically as necessary, including adding or deleting
3139 programs. ~~The commission may review and comment upon the master plan of an~~
3140 ~~exempted school. The commission may review, but may not approve or disapprove,~~

3141 ~~additions or deletions of degree programs, except as expressly provided for in~~
3142 ~~subdivision (39), subsection (a), section four of article one-b of this chapter.~~

3143 (4) For the exempted schools, the master plan shall be updated at least bi-annually and
3144 include the steps taken to meet the legislatively established policies contained in article
3145 one-d of this chapter and reports on each of the data elements identified in article one-d
3146 of this chapter, including progress that the exempted schools are making relating to
3147 retention and graduation rates for resident students by organization and each college
3148 within the organization. The exempted schools shall provide copies of their respective
3149 master plan to the Legislative Oversight Commission on Education Accountability ~~and~~
3150 ~~the commission.~~

3151 (c) Develop a ten-year campus development plan in accordance with article nineteen of
3152 this chapter;

3153 (d) Prescribe for the institution, under its jurisdiction, in accordance with its master plan
3154 and compact, specific functions and responsibilities to achieve the goals, objectives and
3155 priorities established in articles one and one-d of this chapter to meet the higher
3156 education needs of its area of responsibility and to avoid unnecessary duplication;

3157 (e) Direct the preparation of an appropriation request for the institution under its
3158 jurisdiction, which relates directly to missions, goals and projections found in the master
3159 plan and the compact;

3160 (f) Consider, revise and for community and technical colleges, submit for review and
3161 approval to the ~~commission or council~~, as appropriate, an appropriation request on
3162 behalf of the institution under its jurisdiction, including the exempted schools;

3163 (g) Review, at least every five years, all academic programs offered at the institution

3164 under its jurisdiction. The review shall address the viability, adequacy and necessity of
3165 the programs in relation to established state goals, objectives and priorities, the master
3166 plan, the compact and the education and workforce needs of its responsibility district. As
3167 a part of the review, each governing board shall require the institution under its
3168 jurisdiction to conduct periodic studies of its graduates and their employers to determine
3169 placement patterns and the effectiveness of the education experience. Where
3170 appropriate, these studies should coincide with the studies required of many academic
3171 disciplines by their accrediting bodies;

3172 (h) Ensure that the sequence and availability of academic programs and courses offered
3173 by the institution under its jurisdiction is such that students have the maximum
3174 opportunity to complete programs in the time frame normally associated with program
3175 completion. Each governing board is responsible to see that the needs of nontraditional
3176 college-age students are appropriately addressed and, to the extent it is possible for the
3177 individual governing board to control, to assure core course work completed at the
3178 institution is transferable to any other state institution of higher education for credit with
3179 the grade earned;

3180 (i) Subject to article one-b of this chapter, approve the teacher education programs
3181 offered in the institution under its control. ~~In order to permit graduates of teacher~~
3182 ~~education programs to receive a degree from a nationally accredited program and in~~
3183 ~~order to prevent expensive duplication of program accreditation, the commission may~~
3184 ~~select and use one nationally recognized teacher education program accreditation~~
3185 ~~standard as the appropriate standard for program evaluation;~~

3186 (j) Involve faculty, students and classified employees in institution-level planning and
3187 decision making when those groups are affected;

3188 (k) Subject to federal law and pursuant to articles seven, eight, nine and nine-a of this
3189 chapter and to rules adopted by the ~~commission and the council~~ for community and
3190 technical colleges, administer a system for the management of personnel matters,
3191 including, but not limited to, discipline for employees at the institution under its
3192 jurisdiction: ~~Provided, That any rules adopted by the commission and the council do not~~
3193 ~~apply to exempted schools;~~

3194 (l) Administer a system for hearing employee grievances and appeals. Notwithstanding
3195 any other provision of this code to the contrary, the procedure established in article two,
3196 chapter six-c of this code is the exclusive mechanism for hearing prospective employee
3197 grievances and appeals;

3198 (m) Solicit and use or expend voluntary support, including financial contributions and
3199 support services, for the institution under its jurisdiction;

3200 (n) Appoint a president for the institution under its jurisdiction, subject to section six,
3201 article one-b of this chapter;

3202 (o) Conduct written performance evaluations of the president, pursuant to section six,
3203 article one-b of this chapter;

3204 (p) Employ all faculty and staff at the institution under its jurisdiction. The employees
3205 operate under the supervision of the president, but are employees of the governing
3206 board;

3207 (q) Submit to the ~~commission or council~~, as appropriate, any data or reports requested
3208 by the ~~commission or council~~ within the time frame set by the ~~commission or council~~;

3209 (r) Enter into contracts or consortium agreements with the public schools, private
3210 schools or private industry to provide technical, vocational, college preparatory, remedial

3211 and customized training courses at locations either on campuses of the state institutions
3212 of higher education or at off-campus locations in the institution's responsibility district. To
3213 accomplish this goal, the boards may share resources among the various groups in the
3214 community;

3215 (s) Provide and transfer funds and property to certain corporations pursuant to section
3216 ten, article twelve of this chapter;

3217 (t) Delegate, with prescribed standards and limitations, the part of its power and control
3218 over the business affairs of the institution to the president in any case where it considers
3219 the delegation necessary and prudent in order to enable the institution to function in a
3220 proper and expeditious manner and to meet the requirements of its master plan and
3221 compact. If a governing board of a community and technical college elects to delegate
3222 any of its power and control under this subsection, it shall enter the delegation in the
3223 minutes of the meeting when the decision was made and shall notify the ~~commission or~~
3224 council, as appropriate. Any delegation of power and control may be rescinded by the
3225 appropriate governing board, the ~~commission or~~ council, as appropriate, at any time, in
3226 whole or in part, ~~except that the commission may not revoke delegations of authority~~
3227 ~~made by the governing board of the exempted schools.~~

3228 (u) Unless changed by the ~~commission or the council~~ as to community and technical
3229 colleges, as appropriate, continue to abide by existing rules setting forth standards for
3230 accepting advanced placement credit for the institution under its jurisdiction. Individual
3231 departments at a state institution of higher education, with approval of the faculty senate,
3232 may require higher scores on the advanced placement test than scores designated by
3233 the governing board when the credit is to be used toward meeting a requirement of the
3234 core curriculum for a major in that department;

3235 (v) Consult, cooperate and coordinate with the State Treasurer and the State Auditor to
3236 update as necessary and maintain an efficient and cost-effective system for the financial
3237 management and expenditure of appropriated and nonappropriated revenue at the
3238 institution under its jurisdiction. The system shall ensure that properly submitted
3239 requests for payment are paid on or before the due date but, in any event, within fifteen
3240 days of receipt in the State Auditor's Office;

3241 (w) In consultation with the appropriate chancellor and the Secretary of the Department
3242 of Administration, develop, update as necessary and maintain a plan to administer a
3243 consistent method of conducting personnel transactions, including, but not limited to,
3244 hiring, dismissal, promotions, changes in salary or compensation and transfers at the
3245 institution under its jurisdiction. Each personnel transaction shall be accompanied by the
3246 appropriate standardized system or forms, as appropriate, which shall be submitted to
3247 the respective governing board and the Department of Administration:

3248 (1) Not later than July 1, 2012, the Department of Administration shall make available to
3249 each governing board the option of using a standardized electronic system for these
3250 personnel transactions.

3251 (2) The Secretary of the Department of Administration may suspend a governing board's
3252 participation in the standardized electronic system if he or she certifies to the Governor
3253 that the governing board has failed repeatedly and substantially to comply with the
3254 department's policies for administering the electronic system;

3255 (x) Notwithstanding any other provision of this code to the contrary, transfer funds from
3256 any account specifically appropriated for its use to any corresponding line item in a
3257 general revenue account at any agency or institution under its jurisdiction as long as the
3258 transferred funds are used for the purposes appropriated;

3259 (y) Transfer funds from appropriated special revenue accounts for capital improvements
3260 under its jurisdiction to special revenue accounts at agencies or institutions under its
3261 jurisdiction as long as the transferred funds are used for the purposes appropriated in
3262 accordance with article nineteen of this chapter;

3263 (z) Notwithstanding any other provision of this code to the contrary, acquire legal
3264 services that are necessary, including representation of the governing board, its
3265 institution, employees and officers before any court or administrative body. The counsel
3266 may be employed either on a salaried basis or on a reasonable fee basis. In addition,
3267 the governing board may, but is not required to, call upon the Attorney General for legal
3268 assistance and representation as provided by law; and

3269 (aa) Contract and pay for disability insurance for a class or classes of employees at a
3270 state institution of higher education under its jurisdiction.

3271 ~~(bb) A governing board under the jurisdiction of the commission may contract and pay~~
3272 ~~for any supplemental employee benefit, at the governing board's discretion: Provided,~~
3273 ~~That if such supplemental benefit program incurs institutional expense, then the board~~
3274 ~~may not delegate the approval of such supplemental employee benefit program.~~

3275 42. West Virginia Code §18B-2A-6 is hereby amended as follows:

3276 **§18B-2A-6. University status for public baccalaureate institutions of higher**
3277 **education.**

3278 (a) The purpose of this section is to redesignate certain existing public baccalaureate
3279 institutions as universities and to provide a mechanism for other public baccalaureate
3280 institutions to become universities. The change in name is based on each institution's
3281 ability to meet minimum standards developed and adopted by the ~~commission~~ OPE.

3282 (b) Each governing board of a public baccalaureate institution is authorized to make
3283 changes which would further its eligibility to attain university status:

3284 (1) If the college meets the eligibility requirements established by the ~~commission~~ OPE
3285 to attain university status and if the ~~commission~~ OPE grants university status, then the
3286 governing board shall determine the effective date on which the public baccalaureate
3287 institution becomes a university; and

3288 (2) On and after the effective date designated by the governing board, the baccalaureate
3289 institution shall be designated a university.

3290 (c) Concord college, Fairmont state college, Shepherd college and West Virginia state
3291 college, having met the eligibility requirements established by the ~~commission~~ OPE to
3292 attain university status, are hereby designated as universities on the effective date of this
3293 section.

3294 (d) An institution may not request or seek additional state appropriations as a result of
3295 the redesignation provided for in this section. No consequences, including the need to
3296 meet future accreditation requirements in order to maintain university status, which arise
3297 as a result of designating an existing state college as a university, provide sufficient
3298 justification for an institution to request or in any way seek additional state funds.

3299 (e) Notwithstanding any provision of this code to the contrary, Marshall university and
3300 West Virginia University are, and remain, the only research and doctoral degree-granting
3301 public institutions of higher education in this state.

3302 43. West Virginia Code §18B-2A-7 is hereby amended as follows:

3303 **§18B-2A-7. Transfer of orders, resolutions, policies and rules, obligations, etc.;**
3304 **division of assets and liabilities; financial audits.**

3305 (a) When a board of Governors is established for the Community and Technical College
3306 of Shepherd or New River Community and Technical College, all orders, resolutions,
3307 policies and rules adopted or promulgated by the community and technical college's
3308 sponsoring institution relating to the community and technical college or community and
3309 technical college education, or which the newly established board of Governors finds
3310 necessary for the exercise of its lawful powers and duties pursuant to the provisions of
3311 this chapter, shall continue in effect until rescinded, revised, altered or amended by the
3312 newly established board of Governors. Nothing in this section requires the initial rules or
3313 policies of the community and technical college to be promulgated again under the rule
3314 adopted by the council for community and technical college education pursuant to
3315 section six, article one of this chapter unless such rules or policies are rescinded,
3316 revised, altered or amended.

3317 (b) Each valid agreement and obligation, undertaken or agreed to on behalf of either of
3318 the above community and technical colleges by its sponsoring institution before a board
3319 of Governors is established for the community and technical college is hereby
3320 transferred to the board of Governors of the community and technical college once
3321 established.

3322 (c) The boards of Governors of each former sponsoring institution and community and
3323 technical college shall jointly agree on a division of all assets and liabilities between the
3324 sponsoring institution and the community and technical college. If the boards of
3325 Governors are unable to reach agreement concerning a division of assets and liabilities
3326 on or before May 1 following the date on which the board of Governors of the community
3327 and technical college is established, the boards of Governors shall submit a summary of
3328 issues in dispute to the ~~Higher Education Policy Commission~~ OPE and the council for
3329 community and technical college education which shall jointly resolve all outstanding

3330 issues concerning the division of assets and liabilities.

3331 (d) The division of all assets and liabilities between the former sponsoring institution and
3332 community and technical college shall be effective on July 1, following the date on which
3333 the board of Governors of the community and technical college is established.

3334 (e) Any financial audit conducted for the period before the effective date of the division of
3335 assets and liabilities shall treat the community and technical college as an
3336 administratively linked institution.

3337 44. West Virginia Code §18B-2A-7a is hereby amended as follows:

3338 **§18B-2A-7a. Transfer of orders, resolutions, policies and rules, obligations, etc.**

3339 (a) Effective July 1, 2008, a governing board is established for the following state
3340 institutions of higher education pursuant to section one of this article:

3341 (1) Marshall Community and Technical College;

3342 (2) Pierpont Community and Technical College, formerly a division of Fairmont State
3343 University;

3344 (3) The Community and Technical College at West Virginia University Institute of
3345 Technology;

3346 (4) West Virginia State Community and Technical College; and

3347 (5) West Virginia University at Parkersburg.

3348 (b) All orders, resolutions, policies and rules adopted or promulgated by a governing
3349 board of a former administratively linked community and technical college, regional
3350 campus, or division within an accredited institution on behalf of an institution named in

3351 subsection (a) of this section relating to the community and technical college or
3352 community and technical college education, or which the newly-established board of
3353 Governors finds necessary or expedient for the exercise of its lawful powers and duties
3354 pursuant to the provisions of this chapter, shall continue in effect until rescinded, revised,
3355 altered or amended by the newly-established board of Governors. Nothing in this section
3356 requires the initial rules or policies of a community and technical college to be
3357 promulgated again under the rule adopted by the council pursuant to section six, article
3358 one of this chapter unless such rules or policies are rescinded, revised, altered or
3359 amended.

3360 (c) Each valid agreement and obligation, undertaken or agreed to by the former
3361 sponsoring institution or governing board of a division, regional campus or
3362 administratively-linked community and technical college before July 1, 2008, on behalf of
3363 a community and technical college named in subsection (a) of this section is hereby
3364 transferred to the board of Governors of that community and technical college.

3365 (d) Each newly established board of Governors and each appropriate institution formerly
3366 sponsoring a community and technical college shall jointly agree on a division of all
3367 assets and liabilities. If the boards of Governors are unable to reach agreement
3368 concerning a division of assets and liabilities on or before December 1, 2008, the boards
3369 of Governors shall submit a summary of issues in dispute to the ~~commission~~ OPE and
3370 the council which shall jointly resolve all outstanding issues concerning the division of
3371 assets and liabilities.

3372 (e) For purposes of generating audited financial statements for inclusion in the higher
3373 education fund and state single audits, the division of all assets and liabilities shall be
3374 effective retroactively to July 1, 2008.

3375 (f) Any other disputes between an independent community and technical college and its
3376 former sponsoring institution, regarding their respective rights and responsibilities under
3377 this chapter of the code, which cannot be resolved by the governing boards, shall be
3378 resolved as follows:

3379 (1) The matters in dispute shall be summarized in writing and submitted to the
3380 chancellors jointly for resolution;

3381 (2) If the matters in dispute cannot be resolved by the chancellors within thirty days, they
3382 shall be submitted to the council and ~~commission~~ OPE for resolution;

3383 (3) If the ~~commission~~ OPE and council jointly cannot reach a resolution following their
3384 first regularly scheduled meeting or within sixty days, whichever is sooner, the
3385 chairpersons of the ~~commission~~ OPE and council respectively shall establish a three-
3386 person panel to hear the matters and issue a decision within thirty days:

3387 (A) The three-person panel is comprised of one person appointed by the chairperson of
3388 the ~~commission~~ OPE, one person appointed by the chairperson of the council, and one
3389 person appointed jointly by the two chairpersons.

3390 (B) The decision rendered by the three-person panel is binding on the governing boards,
3391 ~~commission~~ OPE and council, and may not be challenged in the courts of this state.

3392 (g) Each former sponsoring institution and community and technical college shall enter
3393 into a comprehensive agreement to address the division of assets and liabilities and the
3394 allocation of revenues and expenditures between former sponsoring institutions and
3395 newly independent community and technical colleges.

3396 (h) Absent manifest injustice as determined jointly by the council and ~~commission~~ OPE,
3397 the following general principles apply to the division of assets and liabilities and

3398 allocation of revenues and expenditures between former sponsoring institutions and the
3399 newly independent community and technical colleges:

3400 (1) For accounting purposes, the institution that assumes responsibility for any asset
3401 also shall assume responsibility for any associated liabilities.

3402 (2) Although one institution may assume responsibility for an asset and associated
3403 liabilities for accounting purposes, both institutions shall agree on their respective
3404 responsibilities for reducing and ultimately eliminating the liability over time if the asset
3405 was originally acquired and/or is being used for the benefit of both institutions.

3406 (A) Any agreement to allocate system and institution educational and general and
3407 auxiliary debt service payments shall be consistent with the provisions of all applicable
3408 bond covenants.

3409 (B) Absent a controlling bond covenant or other agreement, debt service payments
3410 associated with bonded indebtedness presumptively shall be allocated based on the
3411 relative full-time equivalent student enrollment of the two institutions either as a whole or
3412 on the campus where the asset is located and may be adjusted annually to reflect
3413 enrollment changes at the two institutions.

3414 (3) The institutions shall agree to allocate educational and general and auxiliary capital
3415 fees in excess of those needed to cover bonded indebtedness to ensure that assets of
3416 both institutions are maintained in proper repair and that the institutions assume
3417 responsibility for a reasonable share of the total costs of maintaining the facilities.

3418 (4) The institutions shall develop a plan that ensures the financial stability of auxiliary
3419 enterprises, including, but not limited to, student housing, student centers, dining
3420 services, parking, and athletics through fiscal year 2012.

3421 (A) If community and technical college students pay a mandatory athletics fee for the
3422 benefit of a former sponsoring institution, but receive no direct benefit from that fee, the
3423 community and technical college may phase out that fee over a five-year period.

3424 (B) If certain community and technical college students were required to live in institution
3425 housing consistent with rules or policies in effect on the effective date of this section, the
3426 former sponsoring institution may continue to require these students to live in institution
3427 housing for at least one year.

3428 (i) If either institution proposes to reduce the services that it provides or purchases from
3429 the other institution by more than ten percent in any one year and the reduction exceeds
3430 \$200,000, the institution shall obtain the approval of both the council and the
3431 ~~commission~~ OPE before doing so. In evaluating the proposal, the council and
3432 ~~commission~~ OPE shall consider the following:

3433 (1) The benefit to be obtained for the institution seeking to reduce the services it
3434 provides or purchases;

3435 (2) The impact of the proposed reduction on the institution currently providing the
3436 services;

3437 (3) Any additional costs that might be incurred as a result of the reduction in services;
3438 and

3439 (4) The adequacy of the transition plan.

3440 (j) To the extent practicable, state financial systems shall be set up for higher education
3441 institutions which participate in shared services agreements to facilitate ease of
3442 processing while ensuring that data from the two institutions are readily segregable at
3443 the state level.

3444 45. West Virginia Code §18B-2A-8 is hereby amended as follows:

3445 **§18B-2A-8. Additional powers and duties of governing boards.**

3446 (a) The governing board of a state institution of higher education is granted the
3447 additional powers and assigned the associated duties pursuant to this section previously
3448 granted and assigned to the governing boards of Marshall University and West Virginia
3449 University, if the ~~commission~~ OPE or council, as appropriate, approves granting the
3450 powers and assigning the duties to that governing board.

3451 (b) The powers and duties that may be granted and assigned pursuant to this section
3452 are the following:(1) Sections five, six and seven, article three, chapter twelve of this
3453 code;

3454 (2) Section two, article three of this chapter;

3455 (3) Sections five, six and seven, article four of this chapter;

3456 (4) Section seven, article five of this chapter; and

3457 (5) Section six-a, article ten of this chapter.

3458 (c) Additional powers and duties related to purchasing -- The powers and duties granted
3459 and assigned to the governing boards of Marshall University and West Virginia
3460 University by section four, article five of this chapter are extended to the governing
3461 boards of all other state institutions of higher education under the following conditions:

3462 (1) The ~~commission~~ OPE and council shall conduct a study to determine the capacity of
3463 each governing board under their respective jurisdictions to implement the additional
3464 powers and carry out the additional assigned duties related to purchasing;

3465 (2) Based upon the findings of the study, the ~~commission~~ OPE and council shall approve
3466 the governing boards under their respective jurisdictions that they determine have the
3467 capacity to exercise the powers and carry out the assigned duties pursuant to section
3468 four, article five of this chapter; and

3469 (3) The ~~commission~~ OPE and council shall report their findings together with a list of the
3470 governing boards they each have approved to the Legislative Oversight Commission on
3471 Education Accountability by December 1, 2011.

3472 (d) The ~~commission~~ OPE and council have the power and the duty to monitor
3473 participation and provide technical assistance, as requested or required, to governing
3474 boards under their respective jurisdictions and to limit or rescind exercise of the powers,
3475 in whole or in part, granted by this section to a governing board if, in the sole
3476 determination of the ~~commission~~ OPE or council, as appropriate, that action is
3477 warranted.

3478 46. West Virginia Code §18B-2B-4 is hereby amended as follows:

3479 **§18B-2B-4. Appointment, composition and terms of council.**

3480 (a) The council is comprised of thirteen members selected as follows:

3481 (1) Eight members appointed by the Governor, with the advice and consent of the
3482 Senate:

3483 (A) One member shall be appointed from each community and technical college
3484 consortia district as established in this section.

3485 (B) Prior to appointment, the Governor shall interview each candidate to assure that the
3486 person selected understands and is committed to achieving the goals and objectives as

3487 set forth in the institutional compacts and in section one-a, article one of this chapter.

3488 The Governor shall invite the President of the Senate, the Speaker of the House of

3489 Delegates, the chairs of the Senate and House of Delegates committees on finance and

3490 education and such other legislative leaders as the Governor may determine to

3491 participate in interviewing potential candidates. Each member appointed to the council

3492 by the Governor shall represent the public interest and shall be committed to the

3493 legislative intent and goals set forth in section one-a, article one of this chapter.

3494 (2) The chairperson of the West Virginia workforce investment council;

3495 (3) The executive director of the West Virginia Development Office, or designee;

3496 (4) The president of the West Virginia AFL-CIO, or a designee;

3497 (5) ~~The chair of the Higher Education Policy Commission~~ director of the OPE who serves

3498 as an ex officio, nonvoting member of the council; and

3499 (6) The assistant superintendent for technical and adult education of the state

3500 Department of Education who serves as an ex officio, nonvoting member of the council;

3501 (b) Any appointed member shall be a citizen of the state, shall represent the public

3502 interest and shall understand and be committed to achieving the goals and objectives

3503 set forth in section one-a, article one of this chapter, the essential conditions set forth in

3504 article three-c of this chapter, and the goals for secondary and post-secondary

3505 vocational-technical- occupational and adult basic education in the state. Any appointed

3506 member shall represent the interests of the business, labor and employer communities

3507 and demonstrate knowledge of the education needs of the various regions, attainment

3508 levels and age groups within the state.

3509 (c) The Governor may not appoint any person to be a member of the council who is an

3510 officer, employee or member of an advisory board of any state college or university, the
3511 holder of any other public office or public employment under the government of this state
3512 or any of its political subdivisions, an appointee or employee of any governing board or
3513 an immediate family member of any employee under the jurisdiction of the ~~commission~~
3514 OPE or any governing board. An individual may not serve on the council who is engaged
3515 in providing, or employed by a person or company whose primary function is to provide,
3516 workforce development services and activities.

3517 (d) Members of the council serve for staggered terms of four years. Notwithstanding the
3518 provisions of subdivision (1), subsection (a) of this section, on the effective date of this
3519 section any current member of the council maintains his or her appointment to the
3520 council and continues to serve for the remainder of the term for which originally
3521 appointed. Any additional appointment required by the provisions of said subdivision
3522 shall represent a consortia district not otherwise represented on the council.

3523 47. West Virginia Code §18B-2B-6 is hereby amended as follows:

3524 **§18B-2B-6. Powers and duties of the council.**

3525 (a) The council is the sole agency responsible for administration of vocational-technical-
3526 occupational education and community and technical college education in the state. The
3527 council has jurisdiction and authority over the community and technical colleges and the
3528 statewide network of independently accredited community and technical colleges as a
3529 whole, including community and technical college education programs as defined in
3530 section two, article one of this chapter.

3531 (b) The council shall propose rules pursuant to section six, article one of this chapter and
3532 article three-a, chapter twenty-nine-a of this code to implement the provisions of this

3533 section and applicable provisions of article one-d of this chapter:

3534 (1) To implement the provisions of article one-d of this chapter relevant to community
3535 and technical colleges, the council may propose rules ~~jointly with the commission, or~~
3536 ~~separately~~, and may choose to address all components of the accountability system in a
3537 single rule or may propose additional rules to cover specific components;

3538 (2) The rules pertaining to financing policy and benchmarks and indicators required by
3539 this section shall be filed with the Legislative Oversight Commission on Education
3540 Accountability by October 1, 2008. Nothing in this subsection requires other rules of the
3541 council to be promulgated again under the procedure set forth in article three-a, chapter
3542 twenty-nine-a of this code unless such rules are rescinded, revised, altered or amended;
3543 and

3544 (3) The Legislature finds that an emergency exists and, therefore, the council shall
3545 propose an emergency rule or rules to implement the provisions of this section relating
3546 to the financing policy and benchmarks and indicators in accordance with section six,
3547 article one of this chapter and article three-a, chapter twenty-nine-a of this code by
3548 October 1, 2008. The emergency rule or rules may not be implemented without prior
3549 approval of the Legislative Oversight Commission on Education Accountability.

3550 (c) The council has the following powers and duties relating to the authority established
3551 in subsection (a) of this section:

3552 (1) Develop, oversee and advance the public policy agenda for community and technical
3553 college education for the purpose of accomplishing the mandates of this section,
3554 including, but not limited to, the following:

3555 (A) Achieving the goals and objectives established in articles one and one-d of this

- 3556 chapter;
- 3557 (B) Addressing the goals and objectives contained in the institutional compacts created
3558 pursuant to section seven, article one-d of this chapter; and
- 3559 (C) Developing and implementing the master plan described in section five, article one-d
3560 of this chapter;
- 3561 (2) Propose a legislative rule pursuant to subsection (b) of this section and article three-
3562 a, chapter twenty-nine-a of this code to develop and implement a financing policy for
3563 community and technical college education in West Virginia. The rule shall meet the
3564 following criteria:
- 3565 (A) Provide an adequate level of education and general funding for institutions pursuant
3566 to section five, article one-a of this chapter;
- 3567 (B) Serve to maintain institutional assets, including, but not limited to, human and
3568 physical resources and deferred maintenance;
- 3569 (C) Establish a plan for strategic funding to strengthen capacity for support of community
3570 and technical college education; and
- 3571 (D) Establish a plan that measures progress and provides performance-based funding to
3572 institutions which make significant progress in the following specific areas:
- 3573 (i) Achieving the objectives and priorities established in article one-d of this chapter;
- 3574 (ii) Serving targeted populations, especially working age adults twenty-five years of age
3575 and over;
- 3576 (iii) Providing access to high-cost, high-demand technical programs in every region of

3577 the state;

3578 (iv) Increasing the percentage of functionally literate adults in every region of the state;

3579 and

3580 (v) Providing high-quality community and technical college education services to

3581 residents of every region of the state.

3582 (3) Create a policy leadership structure relating to community and technical college

3583 education capable of the following actions:

3584 (A) Developing, building public consensus around and sustaining attention to a long-

3585 range public policy agenda. In developing the agenda, the council shall seek input from

3586 the Legislature and the Governor and specifically from the State Board of Education and

3587 local school districts in order to create the necessary linkages to assure smooth,

3588 effective and seamless movement of students through the public education and post-

3589 secondary education systems and to ensure that the needs of public school courses and

3590 programs can be fulfilled by the graduates produced and the programs offered;

3591 (B) Ensuring that the governing boards of the institutions under the council's jurisdiction

3592 carry out their duty effectively to govern the individual institutions of higher education;

3593 and

3594 (C) Holding each community and technical college and the statewide network of

3595 independently accredited community and technical colleges as a whole accountable for

3596 accomplishing their missions and achieving the goals and objectives established in

3597 articles one, one-d and three-c of this chapter;

3598 (4) Develop for inclusion in the statewide public agenda, a plan for raising education

3599 attainment, increasing adult literacy, promoting workforce and economic development

3600 and ensuring access to advanced education for the citizens of West Virginia;

3601 (5) Provide statewide leadership, coordination, support, and technical assistance to the
3602 community and technical colleges and to provide a focal point for visible and effective
3603 advocacy for their work and for the public policy agendas approved by the ~~commission~~
3604 ~~and~~ council;

3605 (6) Review and adopt annually all institutional compacts for the community and technical
3606 colleges pursuant to the provisions of section seven, article one-d of this chapter;

3607 (7) Fulfill the mandates of the accountability system established in article one-d of this
3608 chapter and report on progress in meeting established goals, objectives, and priorities to
3609 the elected leadership of the state;

3610 (8) Propose a legislative rule pursuant to subsection (b) of this section and article three-
3611 a, chapter twenty-nine-a of this code to establish benchmarks and indicators in
3612 accordance with the provisions of this subsection;

3613 (9) Establish and implement the benchmarks and performance indicators necessary to
3614 measure institutional progress:

3615 (A) In meeting state goals, objectives, and priorities established in articles one and one-d
3616 of this chapter;

3617 (B) In carrying out institutional missions; and

3618 (C) In meeting the essential conditions established in article three-c of this chapter;

3619 (10) Establish a formal process for identifying needs for capital investments and for
3620 determining priorities for these investments for consideration by the Governor and the
3621 Legislature as part of the appropriation request process. ~~Notwithstanding the language~~

3622 ~~in subdivision eleven, subsection a, section four, article one b of this chapter, the~~
3623 ~~commission is not a part of the process for identifying needs for capital investments for~~
3624 ~~the statewide network of independently accredited community and technical colleges;~~

3625 (11) Draw upon the expertise available within the Governor's Workforce Investment
3626 Office and the West Virginia Development Office as a resource in the area of workforce
3627 development and training;

3628 (12) Acquire legal services that are considered necessary, including representation of
3629 the council, its institutions, employees and officers before any court or administrative
3630 body, notwithstanding any other provision of this code to the contrary. The counsel may
3631 be employed either on a salaried basis or on a reasonable fee basis. In addition, the
3632 council may, but is not required to, call upon the Attorney General for legal assistance
3633 and representation as provided by law;

3634 (13) Employ a chancellor for community and technical college education pursuant to
3635 section three of this article;

3636 (14) Employ other staff as necessary and appropriate to carry out the duties and
3637 responsibilities of the council consistent with the provisions of section two, article four of
3638 this chapter;

3639 (15) Employ other staff as necessary and appropriate to carry out the duties and
3640 responsibilities of the council who are employed solely by the council;

3641 (16) Provide suitable offices in Charleston for the chancellor and other staff: Provided,
3642 That the offices may be located outside of Charleston at a technology and research
3643 center: Provided, however, That the current employees of WVNET shall not be moved
3644 from Monongalia County without legislative approval;

3645 (17) Approve the total compensation package from all sources for presidents of
3646 community and technical colleges, as proposed by the governing boards. The governing
3647 boards must obtain approval from the council of the total compensation package both
3648 when presidents are employed initially and subsequently when any change is made in
3649 the amount of the total compensation package;

3650 (18) Establish and implement policies and procedures to ensure that students may
3651 transfer and apply toward the requirements for a degree the maximum number of credits
3652 earned at any regionally accredited in-state or out-of-state higher education institution
3653 with as few requirements to repeat courses or to incur additional costs as is consistent
3654 with sound academic policy;

3655 (19) Establish and implement policies and programs, jointly with the community and
3656 technical colleges, through which students who have gained knowledge and skills
3657 through employment, participation in education and training at vocational schools or
3658 other education institutions, or internet-based education programs, may demonstrate by
3659 competency-based assessment that they have the necessary knowledge and skills to be
3660 granted academic credit or advanced placement standing toward the requirements of an
3661 associate degree or a bachelor's degree at a state institution of higher education;

3662 (20) Seek out and attend regional and national meetings and forums on education and
3663 workforce development-related topics, as council members consider critical for the
3664 performance of their duties. The council shall keep abreast of national and regional
3665 community and technical college education trends and policies to aid members in
3666 developing the policies for this state that meet the education goals and objectives
3667 established in articles one and one-d of this chapter;

3668 (21) Assess community and technical colleges for the payment of expenses of the

3669 council or for the funding of statewide services, obligations or initiatives related
3670 specifically to the provision of community and technical college education;

3671 (22) Promulgate rules allocating reimbursement of appropriations, if made available by
3672 the Legislature, to community and technical colleges for qualifying noncapital
3673 expenditures incurred in the provision of services to students with physical, learning or
3674 severe sensory disabilities;

3675 (23) Assume the prior authority of the ~~commission~~ Higher Education Policy Commission
3676 in examining and approving tuition and fee increase proposals submitted by community
3677 and technical college governing boards as provided in section one, article ten of this
3678 chapter;

3679 (24) Develop and submit to the ~~commission~~ Legislature, a single budget for community
3680 and technical college education that reflects recommended appropriations for community
3681 and technical colleges and that meets the following conditions:

3682 (A) Incorporates the provisions of the financing rule mandated by this section to measure
3683 and provide performance funding to institutions which achieve or make significant
3684 progress toward achieving established state objectives and priorities;

3685 (B) Considers the progress of each institution toward meeting the essential conditions
3686 set forth in section three, article three-c of this chapter, including independent
3687 accreditation; and

3688 (C) Considers the progress of each institution toward meeting the goals, objectives, and
3689 priorities established in article one-d of this chapter and its approved institutional
3690 compact.

3691 (25) Administer and distribute the independently accredited community and technical

3692 college development account;

3693 (26) Establish a plan of strategic funding to strengthen capacity for support and assure
3694 delivery of high-quality community and technical college education in all regions of the
3695 state;

3696 (27) Foster coordination among all state-level, regional and local entities providing post-
3697 secondary vocational education or workforce development and coordinate all public
3698 institutions and entities that have a community and technical college mission;

3699 (28) Assume the principal responsibility for oversight of those community and technical
3700 colleges seeking independent accreditation and for holding governing boards
3701 accountable for meeting the essential conditions pursuant to article three-c of this
3702 chapter;

3703 (29) Advise and consent in the appointment of the presidents of the community and
3704 technical colleges pursuant to section six, article one-b of this chapter. The role of the
3705 council in approving a president is to assure through personal interview that the person
3706 selected understands and is committed to achieving the goals and objectives
3707 established in the institutional compact and in articles one, one-d and three-c of this
3708 chapter;

3709 (30) Provide a single, statewide link for current and prospective employers whose needs
3710 extend beyond one locality;

3711 (31) Provide a mechanism capable of serving two or more institutions to facilitate joint
3712 problem-solving in areas including, but not limited to the following:

3713 (A) Defining faculty roles and personnel policies;

- 3714 (B) Delivering high-cost technical education programs across the state;
- 3715 (C) Providing one-stop service for workforce training to be delivered by multiple
3716 institutions; and
- 3717 (D) Providing opportunities for resource-sharing and collaborative ventures;
- 3718 (32) Provide support and technical assistance to develop, coordinate, and deliver
3719 effective and efficient community and technical college education programs and services
3720 in all regions of the state;
- 3721 (33) Assist the community and technical colleges in establishing and promoting links with
3722 business, industry and labor in the geographic areas for which each community and
3723 technical college is responsible;
- 3724 (34) Develop alliances among the community and technical colleges for resource
3725 sharing, joint development of courses and courseware, and sharing of expertise and
3726 staff development;
- 3727 (35) Serve aggressively as an advocate for development of a seamless curriculum;
- 3728 (36) Cooperate with all providers of education services in the state to remove barriers
3729 relating to a seamless system of public and higher education and to transfer and
3730 articulate between and among community and technical colleges, state colleges and
3731 universities and public education, preschool through grade twelve;
- 3732 (37) Encourage the most efficient use of available resources;
- 3733 (38) Coordinate with the ~~commission~~ OPE in informing public school students, their
3734 parents and teachers of the academic preparation that students need in order to be
3735 prepared adequately to succeed in their selected fields of study and career plans,

3736 including presentation of academic career fairs;

3737 (39) Jointly with the ~~commission~~ OPE, approve and implement a uniform standard, ~~as~~
3738 ~~developed by the chancellors~~, to determine which students shall be placed in remedial or
3739 developmental courses. The standard shall be aligned with college admission tests and
3740 assessment tools used in West Virginia and shall be applied uniformly by the governing
3741 boards throughout the public higher education system. The ~~chancellors~~ OPE and council
3742 shall develop a clear, concise explanation of the standard which the governing boards
3743 shall communicate to the State Board of Education and the State Superintendent of
3744 Schools;

3745 (40) Develop and implement strategies and curriculum for providing developmental
3746 education which shall be applied by any state institution of higher education providing
3747 developmental education;

3748 (41) Develop a statewide system of community and technical college programs and
3749 services in every region of West Virginia for competency-based certification of
3750 knowledge and skills, including a statewide competency-based associate degree
3751 program;

3752 (42) Review and approve all institutional master plans for the community and technical
3753 colleges pursuant to section four, article two-a of this chapter;

3754 (43) Propose rules for promulgation pursuant to subsection (b) of this section and article
3755 three-a, chapter twenty-nine-a of this code that are necessary or expedient for the
3756 effective and efficient performance of community and technical colleges in the state;

3757 (44) In its sole discretion, transfer any rule under its jurisdiction, other than a legislative
3758 rule, to the jurisdiction of the governing boards who may rescind, revise, alter or amend

3759 any rule transferred pursuant to rules adopted by the council and provide technical
3760 assistance to the institutions under its jurisdiction to aid them in promulgating rules;

3761 (45) Develop for inclusion in the higher education report card, as defined in section eight,
3762 article one-d of this chapter, a separate section on community and technical colleges.
3763 This section shall include, but is not limited to, evaluation of the institutions based upon
3764 the benchmarks and indicators developed in subdivision (9) of this subsection;

3765 (46) Facilitate continuation of the Advantage Valley Community College Network under
3766 the leadership and direction of Marshall Community and Technical College;

3767 (47) Initiate and facilitate creation of other regional networks of affiliated community and
3768 technical colleges that the council finds to be appropriate and in the best interests of the
3769 citizens to be served;

3770 (48) Develop with the State Board of Education plans for secondary and post-secondary
3771 vocational-technical-occupational and adult basic education, including, but not limited to
3772 the following:

3773 (A) Policies to strengthen vocational-technical-occupational and adult basic education;
3774 and

3775 (B) Programs and methods to assist in the improvement, modernization and expanded
3776 delivery of vocational-technical-occupational and adult basic education programs;

3777 (49) Distribute federal vocational education funding provided under the Carl D. Perkins
3778 Vocational and Technical Education Act of 1998, PL 105-332, with an emphasis on
3779 distributing financial assistance among secondary and post-secondary vocational-
3780 technical-occupational and adult basic education programs to help meet the public policy
3781 agenda.

3782 In distributing funds the council shall use the following guidelines:

3783 (A) The State Board of Education shall continue to be the fiscal agent for federal
3784 vocational education funding;

3785 (B) The percentage split between the State Board of Education and the council shall be
3786 determined by rule promulgated by the council under the provisions of article three-a,
3787 chapter twenty-nine-a of this code. The council shall first obtain the approval of the State
3788 Board of Education before proposing a rule;

3789 (50) Collaborate, cooperate and interact with all secondary and post-secondary
3790 vocational-technical-occupational and adult basic education programs in the state,
3791 including the programs assisted under the federal Carl D. Perkins Vocational and
3792 Technical Education Act of 1998, PL 105-332, and the Workforce Investment Act of
3793 1998, to promote the development of seamless curriculum and the elimination of
3794 duplicative programs;

3795 (51) Coordinate the delivery of vocational-technical-occupational and adult basic
3796 education in a manner designed to make the most effective use of available public funds
3797 to increase accessibility for students;

3798 (52) Analyze and report to the State Board of Education on the distribution of spending
3799 for vocational-technical-occupational and adult basic education in the state and on the
3800 availability of vocational-technical-occupational and adult basic education activities and
3801 services within the state;

3802 (53) Promote the delivery of vocational-technical-occupational education, adult basic
3803 education and community and technical college education programs in the state which
3804 emphasize the involvement of business, industry and labor organizations;

3805 (54) Promote public participation in the provision of vocational-technical-occupational
3806 education, adult basic education and community and technical education at the local
3807 level, emphasizing programs which involve the participation of local employers and labor
3808 organizations;

3809 (55) Promote equal access to quality vocational-technical-occupational education, adult
3810 basic education and community and technical college education programs to
3811 handicapped and disadvantaged individuals, adults in need of training and retraining,
3812 single parents, homemakers, participants in programs designed to eliminate sexual bias
3813 and stereotyping and criminal offenders serving in correctional institutions;

3814 (56) Meet annually between the months of October and December with the Advisory
3815 Committee of Community and Technical College Presidents created pursuant to section
3816 eight of this article to discuss those matters relating to community and technical college
3817 education in which advisory committee members or the council may have an interest;

3818 (57) Accept and expend any gift, grant, contribution, bequest, endowment or other
3819 money for the purposes of this article;

3820 (58) Assume the powers set out in section nine of this article. The rules previously
3821 promulgated by the State College System Board of Directors pursuant to that section
3822 and transferred to the ~~commission~~ are hereby Higher Education Policy Commission
3823 were previously transferred to the council and shall continue in effect until rescinded,
3824 revised, altered or amended by the council;

3825 (59) Pursuant to the provisions of subsection (b) of this section and article three-a,
3826 chapter twenty-nine-a of this code, promulgate a ~~uniform-joint~~ legislative rule ~~with the~~
3827 ~~commission~~ for the purpose of standardizing, as much as possible, the administration of

3828 personnel matters among the ~~institutions of higher education~~ community and technical
3829 colleges;

3830 (60) Determine when a joint rule among the governing boards of the community and
3831 technical colleges is necessary or required by law and, in those instances and in
3832 consultation with the governing boards, promulgate the joint rule;

3833 (61) Promulgate a ~~joint rule with the commission~~ establishing tuition and fee policy for all
3834 ~~institutions of higher education~~ community and technical colleges. The rule shall include,
3835 but is not limited to, the following:

3836 (A) Comparisons with peer institutions;

3837 (B) Differences among institutional missions;

3838 (C) Strategies for promoting student access;

3839 (D) Consideration of charges to out-of-state students; and

3840 (E) Any other policies the ~~commission and council consider~~ considers appropriate;

3841 (62) In cooperation with the West Virginia Division of Highways, study a method for
3842 increasing the signage signifying community and technical college locations along the
3843 state interstate highways, and report to the Legislative Oversight Commission on
3844 Education Accountability regarding any recommendations and required costs; and

3845 (63) Implement a policy jointly with the ~~commission~~ OPE whereby any course credit
3846 earned at a community and technical college transfers for program credit at any other
3847 state institution of higher education and is not limited to fulfilling a general education
3848 requirement.

3849 (d) In addition to the powers and duties listed in subsections (a), (b) and (c) of this
3850 section, the council has the following general powers and duties related to its role in
3851 developing, articulating and overseeing the implementation of the public policy agenda
3852 for community and technical colleges:

3853 (1) Planning and policy leadership including a distinct and visible role in setting the
3854 state's policy agenda for the delivery of community and technical college education and
3855 in serving as an agent of change;

3856 (2) Policy analysis and research focused on issues affecting the community and
3857 technical college network as a whole or a geographical region thereof;

3858 (3) Development and implementation of each community and technical college mission
3859 definition including use of incentive and performance funds to influence institutional
3860 behavior in ways that are consistent with achieving established state goals, objectives,
3861 and priorities;

3862 (4) Academic program review and approval for the institutions under its jurisdiction,
3863 including the use of institutional missions as a template to judge the appropriateness of
3864 both new and existing programs and the authority to implement needed changes;

3865 (5) Development of budget and allocation of resources for institutions delivering
3866 community and technical college education, including reviewing and approving
3867 institutional operating and capital budgets and distributing incentive and performance-
3868 based funding;

3869 (6) Acting as the agent to receive and disburse public funds related to community and
3870 technical college education when a governmental entity requires designation of a
3871 statewide higher education agency for this purpose;

3872 (7) Development, establishment and implementation of information, assessment and
3873 internal accountability systems, including maintenance of statewide data systems that
3874 facilitate long-term planning and accurate measurement of strategic outcomes and
3875 performance indicators for community and technical colleges;

3876 (8) Jointly with the ~~commission~~ OPE, development, establishment and implementation of
3877 policies for licensing and oversight of both public and private degree-granting and
3878 nondegree-granting institutions that provide post-secondary education courses or
3879 programs;

3880 (9) Development, implementation and oversight of statewide and regionwide projects
3881 and initiatives related specifically to providing community and technical college
3882 education such as those using funds from federal categorical programs or those using
3883 incentive and performance-based funding from any source; and

3884 (10) Quality assurance that intersects with all other duties of the council particularly in
3885 the areas of planning, policy analysis, program review and approval, budgeting and
3886 information and accountability systems.

3887 (e) The council may withdraw specific powers of a governing board under its jurisdiction
3888 for a period not to exceed two years if the council makes a determination that any of the
3889 following conditions exist:

3890 (1) The governing board has failed for two consecutive years to develop an institutional
3891 compact as required in section seven, article one-d of this chapter;

3892 (2) The council has received information, substantiated by independent audit, of
3893 significant mismanagement or failure to carry out the powers and duties of the board of
3894 governors according to state law; or

3895 (3) Other circumstances which, in the view of the council, severely limit the capacity of
3896 the board of governors to carry out its duties and responsibilities.

3897 The period of withdrawal of specific powers may not exceed two years during which time
3898 the council is authorized to take steps necessary to reestablish the conditions for
3899 restoration of sound, stable and responsible institutional governance.

3900 (f) In addition to the powers and duties provided for in subsections (a), (b), (c) and (d) of
3901 this section and any others assigned to it by law, the council has those powers and
3902 duties necessary or expedient to accomplish the purposes of this article; and

3903 ~~(g) When the council and commission, each, is required to consent, cooperate,~~
3904 ~~collaborate or provide input into the actions of the other the following conditions apply:~~

3905 ~~(1) The body acting first shall convey its decision in the matter to the other body with a~~
3906 ~~request for concurrence in the action;~~

3907 ~~(2) The commission or the council, as the receiving body, shall place the proposal on its~~
3908 ~~agenda and shall take final action within sixty days of the date when the request for~~
3909 ~~concurrence is received; and~~

3910 ~~(3) If the receiving body fails to take final action within sixty days, the original proposal~~
3911 ~~stands and is binding on both the commission and the council.~~

3912 48. West Virginia Code §18B-2B-7 is hereby amended as follows:

3913 **§18B-2B-7. Powers and duties of the chief executive officer.**

3914 The chancellor for community and technical college education is the chief executive
3915 officer of the council and as such may exercise the powers and duties assigned by the
3916 council. The chancellor has the following powers and duties:

3917 (1) To serve as the principal accountability point for the council for implementation of the
3918 public policy agenda as it relates to community and technical colleges;

3919 (2) To assume principal responsibility for directing and assisting the work of the council;
3920 and

3921 (3) To supervise and direct staff of the council as necessary and appropriate to carry out
3922 the duties and responsibilities of this article.

3923 (A) ~~On the effective date of this section, all~~ All personnel employed by the ~~commission~~
3924 Higher Education Policy Commission and under the supervision of the vice chancellor
3925 for community and technical college education and workforce development on January
3926 1, 2004, are transferred to the jurisdiction of the council and are under the direct
3927 supervision of the chancellor for community and technical college education.

3928 (B) Prior to October 1, 2004, any such employee, including the chief executive officer of
3929 the council, may not be terminated or have his or her salary or benefit level reduced as
3930 the result of the governance reorganization set forth in this article.

3931 (4) On behalf of the council, the chancellor may enter into agreements with any state
3932 agency or political subdivision of the state, any state higher education institution or any
3933 other person or entity to enlist staff assistance to implement the powers and duties
3934 assigned to the council by state law.

3935 (5) The chancellor is responsible for the day-to-day operations of the council and has the
3936 following responsibilities:

3937 (A) To carry out policy and program directives of the council;

3938 (B) To develop and submit annual reports on the implementation plan to achieve the

3939 goals and objectives set forth in section one-a, article one of this chapter and in the
3940 institutional compacts;

3941 (C) To prepare and submit to the council for its approval the proposed budget of the
3942 council including the office of the chancellor and necessary staff;

3943 (D) To assist the governing boards in developing rules, subject to the provisions of
3944 section six, article one of this chapter. Nothing in this chapter requires the rules of the
3945 governing boards to be filed pursuant to the rule-making procedures provided in article
3946 three-a, chapter twenty-nine-a of this code. The chancellor is responsible for ensuring
3947 that any policy which is required to be uniform across the institutions under the
3948 jurisdiction of the council is applied in a uniform manner; and

3949 (E) To perform all other duties and responsibilities assigned by the council or by state
3950 law.

3951 (6) The chancellor shall be reimbursed for all actual and necessary expenses incurred in
3952 the performance of all assigned duties and responsibilities.

3953 (7) The council is the primary advocate for community and technical college education
3954 and, with the chancellor, advises the Legislature on matters of community and technical
3955 college education in West Virginia. The chancellor shall work closely with the Legislative
3956 Oversight commission on education accountability and with the elected leadership of the
3957 state to ensure that they are fully informed about community and technical college
3958 education issues and that the council fully understands the goals for higher education
3959 that the Legislature has established by law.

3960 (8) The chancellor may design and develop for consideration by the council new
3961 statewide or regional initiatives directly related to community and technical college

3962 education and in accordance with the goals set forth in section one-a, article one of this
3963 chapter and the public policy agenda.

3964 (9) The chancellor shall work closely with members of the state Board of Education and
3965 with the State Superintendent of Schools to assure that the following goals are met:

3966 (A) Development and implementation of a seamless kindergarten-through-college
3967 system of education; and

3968 (B) Appropriate coordination of missions and programs. To further the goals of
3969 cooperation and coordination between the council and the state Board of Education, the
3970 chancellor serves as an ex officio, nonvoting member of the state Board of Education.

3971 49. West Virginia Code §18B-2C-5 is hereby amended as follows:

3972 ~~§18B-2C-5. Transfer of powers, duties, property, obligations, etc., of prior~~
3973 ~~governing boards to the governing board of West Virginia community and~~
3974 ~~technical college.~~

3975 ~~If the commission determines that any of the conditions provided for in section three of~~
3976 ~~this article have been met, then as to those entities to whom the conditions apply, the~~
3977 ~~commission may:~~

3978 ~~(1) Designate the governing boards that shall become institutional boards of advisors~~
3979 ~~and transfer governing authority of that board to the governing board of the college;~~

3980 ~~(2) Transfer as appropriate, consistent with state law, all powers, duties, property,~~
3981 ~~obligations, contracts, rules, orders, resolutions or any other matters which should be~~
3982 ~~transferred or vested in the governing board;~~

3983 ~~(3) Assign powers and duties to the governing board and the college as may be~~

3984 ~~necessary or expedient to accomplish the purposes of this article;~~

3985 ~~(4) Create the office of president of the college; and~~

3986 ~~(5) Take such other action as necessary or expedient to accomplish the purposes of this~~
3987 ~~chapter.~~

3988 50. West Virginia Code §18B-2C-6 is hereby amended as follows:

3989 **§18B-2C-6. Powers and duties of governing board for the West Virginia**
3990 **community and technical college.**

3991 (a) The council created pursuant to article two-b of this chapter is the governing board
3992 for the West Virginia community and technical college.

3993 (b) The powers and duties of the governing board are as follows:

3994 (1) To assist the public community and technical colleges, branches, centers, regional
3995 centers and other delivery sites with a community and technical college mission in any
3996 way practicable to meet the goals and objectives set forth in section one-a, article one of
3997 this chapter;

3998 (2) To assist in meeting any other goals or objectives adopted by the ~~commission~~ OPE
3999 as part of its public policy agenda;

4000 (3) To accept and expend any gift, grant, contribution, bequest, endowment or other
4001 money for the purposes of this article;

4002 (4) To exercise all the powers and duties ascribed to governing boards in section four,
4003 article two-a of this chapter; and

4004 (5) To meet annually between the months of October and December with the advisory

4005 committee of community and technical college presidents and provosts created pursuant
4006 to section eight, article two-b of this chapter to discuss those matters relating to
4007 community and technical college education in which advisory committee members or the
4008 council may have an interest.

4009 (c) The governing board has the following powers and duties as to all institutions:

4010 (1) To coordinate public community and technical colleges, branches, centers, regional
4011 centers, and other delivery sites with a community and technical college mission
4012 including, but not limited to, those that are free-standing or administratively-linked to a
4013 sponsoring institution.

4014 (2) To negotiate arrangements with individual entities who may elect to become units of
4015 the college for academic and accreditation purposes while retaining certain
4016 administrative links to a sponsoring institution;

4017 (3) To develop the college as a statewide, accredited institution through which multiple,
4018 affiliated entities and sites may achieve accreditation;

4019 (4) To provide directly to community and technical colleges, branches, centers, regional
4020 centers and other delivery sites with a community and technical college mission, certain
4021 support services including, but not limited to, student information systems, registration,
4022 financial and accounting systems and employee recordkeeping; and

4023 (5) To exercise all the powers and duties assigned to the council pursuant to the
4024 provisions of article two-b of this chapter ~~or by the commission.~~

4025 (d) ~~Subject to the supervision of the commission, the~~ The governing board has the
4026 following powers and duties as to any entity meeting the conditions of transfer pursuant
4027 to section four of this article:

4028 (1) To govern and have direct academic and administrative responsibility for any public
4029 community and technical college, branch, center, regional center, or other delivery site
4030 with a community and technical college mission.

4031 (2) To require the entities to seek independent accreditation through the college.

4032 (3) To allocate state budgetary resources to the entity; and

4033 (4) ~~With the advice and consent of the commission, to~~ To appoint the administrative
4034 heads of institutions governed by the governing board.

4035 51. West Virginia Code §18B-2C-7 is hereby amended as follows:

4036 **§18B-2C-7. Powers and duties of vice chancellor as president of the West Virginia**
4037 **community and technical college.**

4038 The vice chancellor serves as the acting president of the college until such time as a
4039 president is selected as prescribed by law. As acting president, the vice chancellor has
4040 all the powers and duties assigned by law, ~~by the commission~~ or by the governing board.
4041 In addition, the vice chancellor shall continue to exercise all other powers and duties
4042 assigned by law ~~or by the commission~~.

4043 52. West Virginia Code §18B-3-3 is hereby amended as follows:

4044 **§18B-3-3. Relationship of governing boards to the ~~commission~~ OPE and the**
4045 **council.**

4046 (a) Relationship between the ~~commission~~ OPE and the governing boards. --

4047 (1) The ~~commission~~ OPE functions as a state-level ~~coordinating board~~ service provider
4048 exercising its powers and duties in relation to the governing boards as prescribed by law;

4049 (2) The primary ~~responsibility~~ responsibilities of the ~~commission~~ OPE ~~is~~ are to work
4050 collaboratively with the governing boards to ~~research, develop and propose policy that~~
4051 ~~will achieve the established goals, objectives, and priorities set forth in this chapter and~~
4052 ~~chapter eighteen-c of this code~~ provide services needed by public and private institutions
4053 of higher education and to perform the other duties set forth in section four, article one b
4054 of this chapter; and

4055 (3) The ~~commission~~ OPE has specific powers and duties which include, but are not
4056 limited to, the following:

4057 (A) Advocating for public higher education at the state level;

4058 ~~(B) Jointly with the council, implementing the classification and compensation system~~
4059 ~~established by articles seven, eight, nine and nine-a of this chapter; and~~

4060 ~~(C~~ B) Collecting and analyzing data, researching, developing recommendations, and
4061 advising the Legislature and the Governor on broad policy initiatives, use of incentive
4062 funding, national and regional trends in higher education and issues of resource
4063 allocation involving multiple governing boards.

4064 (b) Relationship between the council and the governing boards. -- (1) The council
4065 maintains all powers and duties assigned to it by law or rule relating to community and
4066 technical colleges as defined in section two, article one of this chapter;

4067 (2) The council functions as a coordinating board for the institutions under its jurisdiction
4068 which make up the statewide network of independently-accredited community and
4069 technical colleges. In addition to recognizing the authority assigned by law to the council
4070 and abiding by rules duly promulgated by the council relating to the community and
4071 technical colleges, the governing boards shall exercise their authority and carry out their

4072 responsibilities in a manner that is consistent with and complementary to the powers and
4073 duties assigned by law or rule to the community and technical colleges or to the council;

4074 (c) The governing boards shall work collaboratively with the ~~commission~~ OPE, the
4075 council and their staff to provide all information requested by the ~~commission~~ OPE or the
4076 council in an appropriate format and in a timely manner.

4077 53. West Virginia Code §18B-3-4 is hereby amended as follows:

4078 **§18B-3-4. Duty of governing boards to address state priorities.**

4079 The expertise of faculty and graduate students at state institutions of higher education is
4080 important to every citizen of this state. It is the responsibility of the governing boards to
4081 channel this expertise into research and analysis that will yield measurable benefits to
4082 the citizens of West Virginia. Therefore, in addition to the goals, objectives and priorities
4083 established in section one-a, article one and article one-d of this chapter and goals
4084 established elsewhere in this code, it is the responsibility of the governing boards to
4085 concentrate attention and resources on certain specific state priorities that have a direct,
4086 positive impact on the economic, social and cultural well-being of the people of West
4087 Virginia.

4088 (a) Priorities for Marshall University and West Virginia University in collaboration:

4089 (1) Developing Regional Brownfield Assistance Centers pursuant to section seven,
4090 article eleven of this chapter;

4091 (2) Performing professional development-related research and coordinating the delivery
4092 of professional development to educators in the public schools of the state pursuant to
4093 article two, chapter eighteen of this code; and

4094 (3) Building subject matter expertise in public education finance, including mastery of the
4095 theories and concepts used in developing formulas to provide state-level financial
4096 support to public education.

4097 (b) The Legislature may, but is not required to, make additional appropriations for the
4098 benefit of Marshall University and West Virginia University to assist them in fulfilling the
4099 purposes set forth in subsection (a) of this section.

4100 (c) Additional priorities for governing boards:

4101 (d) In addition to the priorities established in subsection (a) of this section, each
4102 governing board ~~under the jurisdiction of the commission~~ shall focus resources and
4103 attention on improving its graduation rate for full-time undergraduate students as a
4104 specific institutional priority. The graduation rate is measured as a percentage of the
4105 number of undergraduate students who obtain a degree within six years of the date of
4106 enrollment as full-time freshmen.

4107 (1) By July 1, 2015, the governing board of each state institution of higher education
4108 ~~under the jurisdiction of the commission, including the governing boards of Marshall~~
4109 ~~University and West Virginia University,~~ shall attain a graduation rate for full-time
4110 undergraduate students that equals or exceeds the graduation rate of its peers
4111 established pursuant to section three, article one-a of this chapter.

4112 (2) The ~~commission~~ OPE shall monitor and report annually by December 1, to the
4113 Legislative Oversight Commission on Education Accountability on the progress of the
4114 governing boards toward meeting the goals set forth in this subsection.

4115 54. West Virginia Code §18B-3C-8 is hereby amended as follows:

4116 **§18B-3C-8. Legislative findings and intent; statewide network of independently**

4117 **accredited community and technical colleges; operations and administration.**

4118 (a) Legislative findings. --

4119 (1) The Legislature has enacted legislation, beginning with Enrolled Senate Bill No. 653,
4120 passed during the two thousand regular session, and continuing with Enrolled Senate
4121 Bill No. 703, passed during the two thousand one regular session, Enrolled House Bill
4122 No. 2224, passed during the two thousand three regular session, and Enrolled Senate
4123 Bill No. 448, passed during the two thousand four regular session, the purpose of which
4124 is to strengthen the state's community and technical colleges, clarify their core mission
4125 and establish essential conditions to be met, and ensure the most effective delivery of
4126 services to business, industry, and West Virginia citizens in every region of the state.

4127 (2) The primary goal of the Legislature is to create a statewide network of independently
4128 accredited community and technical colleges that focuses on technical education, work
4129 force training, and lifelong learning for the Twenty-first Century, consistent with the
4130 goals, objectives, priorities and essential conditions established in articles one, one-d
4131 and three-c of this chapter.

4132 (3) A necessary precedent to accomplishing the legislative goal is to change the way
4133 that leaders at all levels of education, including institutional governing boards, view
4134 community and technical colleges. Specifically, that the mission of community and
4135 technical colleges is different from that of traditional four-year colleges in what they seek
4136 to accomplish and how they can achieve it effectively and that the state cannot compete
4137 successfully in today's information-driven, technology-based economy if community and
4138 technical colleges continue to be viewed as add-ons or afterthoughts attached to the
4139 baccalaureate institutions.

4140 (b) Legislative intent. --

4141 (1) Therefore, it is the intent of the Legislature that the statewide network of
4142 independently-accredited community and technical colleges as a whole and each
4143 independent community and technical college individually provide the following types of
4144 services as part of the core institutional mission:

4145 (A) Career and technical education certificate, associate of applied science, and
4146 selected associate of science degree programs for students seeking immediate
4147 employment, individual entrepreneurship skills, occupational development, skill
4148 enhancement and career mobility;

4149 (B) Transfer education associate of arts and associate of science degree programs for
4150 students whose educational goal is to transfer into a baccalaureate degree program with
4151 particular emphasis on reaching beyond traditional college-age students to unserved or
4152 underserved adult populations;

4153 (C) Developmental/remedial education courses, tutorials, skills development labs, and
4154 other services for students who need to improve their skills in mathematics, English,
4155 reading, study skills, computers and other basic skill areas;

4156 (D) Work force development education contracted with business and industry to train or
4157 retrain employees;

4158 (E) Continuing development assistance and education credit and noncredit courses for
4159 professional and self-development, certification and licensure, and literacy training; and

4160 (F) Community service workshops, lectures, seminars, clinics, concerts, theatrical
4161 performances and other noncredit activities to meet the cultural, civic and personal
4162 interests and needs of the community the institution serves.

4163 (2) It is further the intent of the Legislature that each community and technical college
4164 focus special attention on programmatic delivery of their core mission services to
4165 unserved and underserved populations to achieve established state objectives. These
4166 include the following as highest priorities:

4167 (A) Increasing the number of adults age twenty-five and above who participate in post-
4168 secondary education;

4169 (B) Developing technical programs that meet the documented occupational needs of
4170 West Virginia's employers;

4171 (C) Providing work force development programs by implementing the Adult Career
4172 Pathways Model, which provides opportunities for the following:

4173 (I) Adults to earn certifications through the completion of skill-sets;

4174 (ii) Ordered progression from skill-sets and certifications to one-year certificate programs
4175 and progression from one-year certificate degrees to Associate of Applied Science
4176 Degree programs, and

4177 (iii) Students to exit at any stage of completion in order to enter employment with the
4178 option of continuing the pathway progression at a later time and/or on a part-time basis.

4179 (D) Offering programs in various time frames other than the traditional semester delivery
4180 model and at different locations, including work sites, convenient to working adults;

4181 (E) Providing technical programs in modules or "chunks", defined in competencies
4182 required for employment, and tied to certification and licensing requirements.

4183 (F) Entering into collaborative programs that recognize high-quality training programs
4184 provided through labor unions, registered apprenticeships, and industry-sponsored

4185 training programs with the goal of enabling more adults to earn a college credential;

4186 (G) Developing innovative approaches to improve the basic and functional literacy rates
4187 of West Virginians in all regions of the state;

4188 (H) Developing "bridge programs" for disadvantaged youth and adults to enable them to
4189 acquire the skills necessary to be successful in education and training programs that
4190 lead to high-skills, high-wage jobs; and

4191 (I) Providing access to post-secondary education through the delivery of developmental
4192 education for those individuals academically under-prepared for college-level work.

4193 (c) In fulfillment of the purposes and intent defined in subsections (a) and (b) of this
4194 section, there is continued a statewide network of independently accredited community
4195 and technical colleges serving every region of the state. Each free-standing and
4196 independent community and technical college is strongly encouraged to serve as a
4197 higher education center for its region by brokering with other colleges, universities and
4198 providers, in-state and out-of-state, both public and private, to afford the most
4199 coordinated access to needed programs and services by students, employers and other
4200 clients, to achieve the goals, objectives, and essential conditions established in articles
4201 one, one-d, and three-c of this chapter, and to ensure the most efficient use of scarce
4202 resources.

4203 (d) Statewide network of independently accredited community and technical colleges. --

4204 (1) By July 1, 2009, each governing board of a community and technical college which
4205 became independent on July 1, 2008, shall make a determination by majority vote of the
4206 board whether to keep the current name for its respective institution or to select a new
4207 name. If a governing board chooses to select a new name, any reference in this code to

4208 that institution by a name in use prior to July 1, 2009, means the institution under the
4209 name designated by its board of governors.

4210 (2) The statewide network of independently accredited community and technical colleges
4211 is comprised of the following independent state institutions of higher education under the
4212 jurisdiction of the council:

4213 (A) Blue Ridge Community and Technical College. --

4214 Blue Ridge Community and Technical College is an independently accredited state
4215 institution of higher education. The president and the governing board of the community
4216 and technical college are responsible for maintaining independent accreditation and
4217 adhering to the essential conditions pursuant to section three of this article.

4218 (B) Bridgemont Community and Technical College. --

4219 (i) Bridgemont Community and Technical College is an independently accredited state
4220 institution of higher education which may maintain an association with West Virginia
4221 University Institute of Technology, a division of West Virginia University, or directly with
4222 West Virginia University, subject to the provisions of section twelve of this article. The
4223 president and the governing board of the community and technical college are
4224 responsible for maintaining independent accreditation and adhering to the essential
4225 conditions pursuant to section three of this article.

4226 (ii) West Virginia University Institute of Technology may continue associate degree
4227 programs in areas of particular institutional strength which are closely articulated to its
4228 baccalaureate programs and missions or which are of a high-cost nature and can best
4229 be provided in direct coordination with a baccalaureate institution. Any such program
4230 shall be delivered under the authority of the council and through contract with the

community and technical college. The terms of the contract shall be negotiated between the governing boards of the community and technical college and West Virginia University Institute of Technology or directly with West Virginia University, as appropriate. The final contract may not be implemented until approved by the council except that any contract between the community and technical college and West Virginia University Institute of Technology or West Virginia University related to program delivery under the terms of this section in effect on July 1, 2008, shall continue in effect until July 1, 2009, unless amended or revoked before that date by mutual agreement of the contract parties with approval by the council. Such a program shall be evaluated according to the benchmarks and indicators for community and technical college education developed by the council. If the council determines that the program is making insufficient progress toward accomplishing the benchmarks, the program shall thereafter be delivered by the community and technical college.

(iii) Dual credit course delivery agreements. --

(I) Nothing in this article alters or abrogates any agreement in place on the effective date of this section between West Virginia University Institute of Technology and Bridgemont Community and Technical College relating to delivery of dual credit courses as defined in section two, article one of this chapter;

(II) The community and technical college may deliver technical courses that are part of a certificate or associate degree program as early entrance or dual credit courses for high school students; and

(III) Subject to an agreement between the baccalaureate institution and the community and technical college, the latter may deliver early entrance and dual credit courses as defined in section two, article one of this chapter to students in high schools which are

4255 not served by the baccalaureate institution.

4256 (C) Eastern West Virginia Community and Technical College. --

4257 Eastern West Virginia Community and Technical College is a free-standing state
4258 institution of higher education seeking independent accreditation. The president and the
4259 governing board of Eastern Community and Technical College are responsible for
4260 achieving independent accreditation and adhering to the essential conditions pursuant to
4261 section three of this article.

4262 (D) Mountwest Community and Technical College. --

4263 (i) Mountwest Community and Technical College is an independently accredited state
4264 institution of higher education which may maintain an association with Marshall
4265 University subject to the provisions of section twelve of this article. The president and the
4266 governing board of the community and technical college are responsible for maintaining
4267 independent accreditation and adhering to the essential conditions pursuant to section
4268 three of this article.

4269 (ii) Marshall University may continue associate degree programs in areas of particular
4270 institutional strength which are closely articulated to its baccalaureate programs and
4271 missions or which are of a high-cost nature and can best be provided in direct
4272 coordination with a baccalaureate institution. Any such program shall be delivered under
4273 the authority of the council and through contract with Mountwest Community and
4274 Technical College. The terms of the contract shall be negotiated between the governing
4275 boards of the community and technical college and Marshall University. The final
4276 contract may not be implemented until approved by the council except that any contract
4277 between the community and technical college and Marshall University related to

4278 program delivery under the terms of this section in effect on July 1, 2008, shall continue
4279 in effect until July 1, 2009, unless amended or revoked before that date by mutual
4280 agreement of the contract parties with approval by the council. Such a program shall be
4281 evaluated according to the benchmarks and indicators for community and technical
4282 college education developed by the council. If the council determines that the program is
4283 making insufficient progress toward accomplishing the benchmarks, the program shall
4284 thereafter be delivered by Mountwest Community and Technical College.

4285 (iii) Dual credit course delivery agreements. --

4286 (I) Nothing in this article alters or abrogates any agreement in place on the effective date
4287 of this section between Marshall University and Mountwest Community and Technical
4288 College relating to delivery of dual credit courses as defined in section two, article one of
4289 this chapter;

4290 (II) The community and technical college may deliver technical courses that are part of a
4291 certificate or associate degree program as early entrance or dual credit courses for high
4292 school students; and

4293 (III) Subject to an agreement between the baccalaureate institution and the community
4294 and technical college, the latter may deliver early entrance and dual credit courses as
4295 defined in section two, article one of this chapter to students in high schools which are
4296 not served by the baccalaureate institution.

4297 (E) New River Community and Technical College. --

4298 (i) New River Community and Technical College is an independently accredited state
4299 institution of higher education which may maintain an association with Bluefield State
4300 College subject to the provisions of section twelve of this article. The community and

4301 technical college is headquartered in or near Beckley and incorporates the campuses of
4302 Greenbrier Community College Center of New River Community and Technical College
4303 and Nicholas Community College Center of New River Community and Technical
4304 College.

4305 (ii) The president and the governing board of New River Community and Technical
4306 College are responsible for maintaining independent accreditation and adhering to the
4307 essential conditions pursuant to section three of this article.

4308 (iii) Bluefield State College may continue associate degree programs in areas of
4309 particular institutional strength which are closely articulated to its baccalaureate
4310 programs and missions or which are of a high-cost nature and can best be provided
4311 through direct coordination with a baccalaureate institution. Any such program shall be
4312 delivered under the authority of the council and through contract with the community and
4313 technical college. The terms of the contract shall be negotiated between the governing
4314 boards of the community and technical college and Bluefield State College. The final
4315 contract may not be implemented until approved by the council except that any contract
4316 between the community and technical college and Bluefield State College related to
4317 program delivery under the terms of this section in effect on July 1, 2008, shall continue
4318 in effect until July 1, 2009, unless amended or revoked before that date by mutual
4319 agreement of the contract parties with approval by the council. Such a program shall be
4320 evaluated according to the benchmarks and indicators for community and technical
4321 college education developed by the council. If the council determines that the program is
4322 making insufficient progress toward accomplishing the benchmarks, the program shall
4323 thereafter be delivered by New River Community and Technical College.

4324 (iv) Bluefield State College may continue the associate of science degree in nursing

4325 which is an existing nationally accredited associate degree program in an area of
4326 particular institutional strength and which is closely articulated to the baccalaureate
4327 program and mission. The program is of a high-cost nature and can best be provided
4328 through direct administration by a baccalaureate institution. This program may not be
4329 transferred to New River Community and Technical College or any other community and
4330 technical college as long as the program maintains national accreditation and is
4331 seamlessly coordinated into the baccalaureate program at the institution.

4332 (v) New River Community and Technical College participates in the planning and
4333 development of a unified effort involving multiple providers to meet the documented
4334 education and work force development needs in the region. Nothing in this subdivision
4335 prohibits or limits any existing, or the continuation of any existing, affiliation between
4336 Mountain State University, West Virginia University Institute of Technology and West
4337 Virginia University. The objective is to assure students and employers in the area that
4338 there is coordination and efficient use of resources among the separate programs and
4339 facilities, existing and planned, in the Beckley area.

4340 (F) Pierpont Community and Technical College. --

4341 (i) Pierpont Community and Technical College is an independent state institution of
4342 higher education seeking independent accreditation. The president and the governing
4343 board of Pierpont Community and Technical College, assisted by the president and
4344 governing board of Fairmont State University, are responsible for the community and
4345 technical college achieving independent accreditation and adhering to the essential
4346 conditions pursuant to sections three and thirteen of this article.

4347 (ii) Fairmont State University may continue associate degree programs in areas of
4348 particular institutional strength which are closely articulated to their baccalaureate

4349 programs and missions or which are of a high-cost nature and can best be provided in
4350 direct coordination with a baccalaureate institution. Any such program shall be delivered
4351 under the authority of the council and through contract with the community and technical
4352 college. The terms of the contract shall be negotiated between the council and the
4353 governing board of Fairmont State University. The final contract may not be
4354 implemented until approved by the council except that any contract between the
4355 community and technical college and Fairmont State University related to program
4356 delivery under the terms of this section in effect on July 1, 2008, shall continue in effect
4357 until July 1, 2009, unless amended or revoked before that date by mutual agreement of
4358 the contract parties with approval by the council. Such a program shall be evaluated
4359 according to the benchmarks and indicators for community and technical college
4360 education developed by the council. Such a program shall be evaluated according to the
4361 benchmarks and indicators for community and technical college education developed by
4362 the council. If the council determines that the program is making insufficient progress
4363 toward accomplishing the benchmarks, the program shall thereafter be delivered by the
4364 community and technical college.

4365 (iii) Dual credit course delivery agreements. --

4366 (I) Nothing in this article alters or abrogates any agreement in place on the effective date
4367 of this section between Fairmont State University and Pierpont Community and
4368 Technical College relating to delivery of dual credit courses as defined in section two,
4369 article one of this chapter;

4370 (II) The community and technical college may deliver technical courses that are part of a
4371 certificate or associate degree program as early entrance or dual credit courses for high
4372 school students; and

4373 (III) Subject to an agreement between the baccalaureate institution and the community
4374 and technical college, the latter may deliver early entrance and dual credit courses as
4375 defined in section two, article one of this chapter to students in high schools which are
4376 not served by the baccalaureate institution.

4377 (G) Southern West Virginia Community and Technical College. -- Southern West Virginia
4378 Community and Technical College is an independently-accredited, free-standing state
4379 institution of higher education. The president and the governing board of Southern West
4380 Virginia Community and Technical College are responsible for maintaining independent
4381 accreditation and adhering to the essential conditions pursuant to section three of this
4382 article.

4383 (H) West Virginia Northern Community and Technical College. -- West Virginia Northern
4384 Community and Technical College is an independently-accredited, free-standing state
4385 institution of higher education. The president and the governing board of the community
4386 and technical college are responsible for maintaining independent accreditation and
4387 adhering to the essential conditions pursuant to section three of this article.

4388 (I) Kanawha Valley Community and Technical College. --

4389 (i) Kanawha Valley State Community and Technical College is an independently
4390 accredited state institution of higher education which may maintain an association with
4391 West Virginia State University subject to the provisions of section twelve of this article.
4392 The president and the governing board of the community and technical college are
4393 responsible for maintaining independent accreditation and adhering to the essential
4394 conditions pursuant to section three of this article.

4395 (ii) West Virginia State University may continue associate degree programs in areas of

4396 particular institutional strength which are closely articulated to its baccalaureate
4397 programs and missions or which are of a high-cost nature and can best be provided in
4398 direct coordination with a baccalaureate institution. Any such program shall be delivered
4399 under the authority of the council and through contract with the community and technical
4400 college. The terms of the contract shall be negotiated between the governing boards of
4401 the community and technical college and West Virginia State University. The final
4402 contract may not be implemented until approved by the council except that any contract
4403 between the community and technical college and West Virginia State University related
4404 to program delivery under the terms of this section in effect on July 1, 2008, shall
4405 continue in effect until July 1, 2009, unless amended or revoked before that date by
4406 mutual agreement of the contract parties with approval by the council. Such a program
4407 shall be evaluated according to the benchmarks and indicators for community and
4408 technical college education developed by the council. If the council determines that the
4409 program is making insufficient progress toward accomplishing the benchmarks, the
4410 program shall thereafter be delivered by the community and technical college.

4411 (iii) Dual credit course delivery agreements. --

4412 (I) Nothing in this article alters or abrogates any agreement in place on the effective date
4413 of this section between West Virginia State University and Kanawha Valley Community
4414 and Technical College relating to delivery of dual credit courses as defined in section
4415 two, article one of this chapter;

4416 (II) The community and technical college may deliver technical courses that are part of a
4417 certificate or associate degree program as early entrance or dual credit courses for high
4418 school students; and

4419 (III) Subject to an agreement between the baccalaureate institution and the community

4420 and technical college, the latter may deliver early entrance and dual credit courses as
4421 defined in section two, article one of this chapter to students in high schools which are
4422 not served by the baccalaureate institution.

4423 (J) West Virginia University at Parkersburg. --

4424 (i) West Virginia University at Parkersburg is an independently accredited state
4425 institution of higher education which may maintain an association with West Virginia
4426 University subject to the provisions of section twelve of this article. The president and the
4427 governing board of the community and technical college are responsible for maintaining
4428 independent accreditation and adhering to the essential conditions pursuant to section
4429 three of this article.

4430 (ii) Any contract between the community and technical college and West Virginia
4431 University related to program delivery under the authority of the council or related to
4432 delivery of baccalaureate programs, in effect on July 1, 2008, shall continue in effect
4433 unless amended or revoked by mutual agreement of the contract parties with approval
4434 by the council.

4435 (iii) In recognition of the unique and essential part West Virginia University at
4436 Parkersburg plays in providing education services in its region, the community and
4437 technical college may continue delivering baccalaureate degree programs offered at the
4438 institution on the effective date of this section, may implement additional baccalaureate
4439 programs with the approval of the ~~commission~~ OPE and is strongly encouraged:

4440 (I) To continue and expand its role as a higher education center pursuant to subsection
4441 (c) of this section;

4442 (II) To broker from West Virginia University and other higher education institutions, as

4443 appropriate, additional baccalaureate level degree programs the community and
4444 technical college determines are needed in its service region; and

4445 (III) Any baccalaureate degree programs offered at the community and technical college
4446 shall be delivered under the authority of the ~~commission~~ OPE. The program shall be
4447 evaluated according to the benchmarks and indicators for baccalaureate education
4448 developed by the ~~commission~~ OPE.

4449 55. West Virginia Code §18B-3C-12 is hereby amended as follows:

4450 **§18B-3C-12. Relationship between independent community and technical colleges**
4451 **and former sponsoring institutions.**

4452 (a) Intent and purposes. --

4453 (1) It is the intent of the Legislature to establish community and technical colleges in
4454 every region of the state that meet the essential conditions of section three of this article
4455 and focus on achieving established state goals and objectives.

4456 (2) This section defines the relationship between a community and technical college
4457 which was administratively linked to a sponsoring institution prior to July 1, 2008.

4458 (b) Where an independent community and technical college was linked administratively
4459 to a sponsoring state college or university, or was designated as a regional campus or a
4460 division of another accredited state institution of higher education, prior to July 1, 2008
4461 the following conditions apply:

4462 (1) The community and technical college shall be accredited separately from the former
4463 sponsoring institution;

4464 (2) All state funding allocations for the community and technical college shall be

4465 transferred directly to the community and technical college.

4466 (3) The former sponsoring institution and the community and technical college shall
4467 agree to the fees the former sponsoring institution may charge for administrative
4468 overhead costs.

4469 (A) The fee schedule model agreed to by the institutions shall delineate services to be
4470 provided and the fees to be charged to the community and technical colleges for the
4471 services;

4472 (B) The fee schedule shall be based upon the reasonable and customary fee for any
4473 service, shall bear a rational relationship to the cost of providing the service.

4474 (C) Any contract between a community and technical college and its former sponsoring
4475 institution related to provision of services pursuant to subsection (c) of this section in
4476 effect on July 1, 2008, shall continue in effect until July 1, 2009, unless amended or
4477 revoked before that date by mutual agreement of the contracting parties.

4478 (D) The former sponsoring institution shall continue to provide services pursuant to
4479 subsection (c) of this section as the governing board of the community and technical
4480 college considers appropriate under a negotiated contractual arrangement until July 1,
4481 2011 or the governing boards of both institutions mutually agree to end the contract
4482 arrangement.

4483 (4) An independent community and technical college and the institution from which it
4484 obtains services may customize the fee schedule model to fit their needs.

4485 (5) Policies shall be formally established to ensure the separation of academic and
4486 faculty personnel policies of the community and technical college from those of the
4487 former sponsoring institution. These policies include, but are not limited to, appointment,

4488 promotion, workload and, if appropriate, tenure; and

4489 (c) The former sponsoring institution which was administratively linked to a community
4490 and technical college prior to July 1, 2008, shall provide the following services subject to
4491 the provisions of subsection (b) of this section:

4492 (1) Personnel management;

4493 (2) Recordkeeping;

4494 (3) Payroll;

4495 (4) Accounting;

4496 (5) Legal services;

4497 (6) Registration;

4498 (7) Student aid;

4499 (8) Student records; and

4500 (9) Any other services determined to be necessary and appropriate by the board of
4501 Governors of the former sponsoring institution and the board of Governors of the
4502 community and technical college.

4503 (d) Any disputes between an independent community and technical college and its
4504 former sponsoring institution, regarding their respective rights and responsibilities under
4505 this chapter of the code, which cannot be resolved by the governing boards, shall

4506 be resolved as follows:

4507 (1) The matters in dispute shall be summarized in writing and submitted to the

4508 chancellors jointly for resolution;

4509 (2) If the matters in dispute cannot be resolved by the chancellors within thirty days, they
4510 shall be submitted to the council ~~and commission~~ for resolution;

4511 (3) If the ~~commission and~~ council ~~jointly~~ cannot reach a resolution following ~~their~~ its first
4512 regularly scheduled meeting or within sixty days, whichever is sooner, the ~~chairpersons~~
4513 ~~of the commission and~~ chair of the council ~~respectively~~ shall ~~establish~~ appoint a three-
4514 person panel to hear the matters and issue a decision within thirty days;

4515 ~~(A) The three-person panel is comprised of one person appointed by the chairperson of~~
4516 ~~the commission, one person appointed by the chairperson of the council, and one~~
4517 ~~person appointed jointly by the two chairpersons.~~

4518 ~~(B)~~ The decision rendered by the three-person panel is binding on the governing boards,
4519 ~~commission~~ and council, and may not be challenged in the courts of this state.

4520 (e) The governing board of the community and technical college and the council are
4521 responsible for the development of the community and technical college and for
4522 compliance with the essential conditions, all as required by this article.

4523 (f) The president of the community and technical college has such responsibilities,
4524 powers and duties in the development of the community and technical college and in
4525 compliance with the essential conditions, as directed by the governing board or as are
4526 necessary for the proper implementation of the provisions of this act.

4527 (g) Notwithstanding any other provision of this code to the contrary, the ~~commission~~
4528 council shall take necessary steps to ensure that institutional bonded indebtedness is
4529 secure and that each community and technical college assumes its fair share of any
4530 institutional debt acquired while it was part of the baccalaureate institution.

4531 (h) The community and technical college is encouraged to secure academic services
4532 from the former sponsoring institution when it is in their best interests and beneficial to
4533 the students to be served. In determining whether or not to secure services from the
4534 former sponsoring institution, the community and technical college shall consider the
4535 following:

4536 (1) The cost of the academic services;

4537 (2) The quality of the academic services;

4538 (3) The availability, both as to time and place, of the academic services; and

4539 (4) Such other considerations as the community and technical college finds appropriate
4540 taking into account the best interests of the students to be served, the community and
4541 technical college, and the former sponsoring institution. Nothing in this article prohibits
4542 any state institution of higher education from purchasing or brokering remedial or
4543 developmental courses from a community and technical college.

4544 56. West Virginia Code §18B-3C-15 is hereby amended as follows:

4545 **~~§18B-3C-15. Transition oversight.~~**

4546 ~~(a) The Legislative Oversight Commission on Education Accountability is charged with~~
4547 ~~responsibility to monitor and oversee implementation of the policy changes required by~~
4548 ~~this act.~~

4549 ~~(b) The responsibilities include, but are not limited to, the following:~~

4550 ~~(1) Reviewing the overall progress of the council, the commission and state institutions~~
4551 ~~of higher education in implementing the provisions of this act;~~

4552 ~~(2) Monitoring the development of the rules related to financing policy and benchmarks~~
4553 ~~and indicators pursuant to section six, article two-b of this chapter;~~

4554 ~~(3) Monitoring the development of the statewide master plan for community and~~
4555 ~~technical college education and the institutional compacts pursuant to sections five and~~
4556 ~~seven, article one-d of this chapter;~~

4557 ~~(4) Monitoring the development of the council's state compact pursuant to section six,~~
4558 ~~article one-d of this chapter; and~~

4559 ~~(5) Monitoring the changes in institutional relationships including development or~~
4560 ~~changes in contractual arrangements for services pursuant to section twelve of this~~
4561 ~~article and delivery of dual credit and baccalaureate level courses;~~

4562 ~~(c) The provisions of this section expire June 30, 2009.~~

4563 57. West Virginia Code §18B-4-1 is hereby amended as follows:

4564 **§18B-4-1. Employment of ~~chancellors~~ chancellor; designation of staff; offices.**

4565 (a) The council ~~and commission each~~ shall employ a chancellor to assist in the
4566 performance of ~~their respective~~ the council's duties and responsibilities subject to the
4567 following conditions:

4568 (1) ~~Each~~ The chancellor serves at the will and pleasure of the ~~hiring body~~ council.

4569 (2) ~~Neither~~ The chancellor may not hold or retain any other administrative position within
4570 the system of higher education while employed as chancellor.

4571 (3) ~~Each~~ The chancellor shall carry out the directives of the ~~body by whom employed~~
4572 council and shall collaborate with ~~that body~~ the council in developing policy options.

4573 (4) The ~~commission~~ OPE is responsible to the council and the Chancellor for Community
4574 and Technical College Education for providing services in areas essential to exercising
4575 the powers and duties assigned to the council by law. The ~~commission~~ OPE may not
4576 charge the council any fee for the provision of these essential services. The service
4577 areas include, but are not limited to, legal services, research, technology, computing,
4578 finance and facilities, academic affairs, telecommunications, human resources, student
4579 services and any other general areas the council considers to be essential to the
4580 exercise of its legal authority. The services are provided under the general supervision of
4581 the Vice Chancellor for Administration.

4582 (5) For the purpose of developing or evaluating policy options, the ~~chancellors~~ chancellor
4583 may request the assistance of the presidents and staff employed by the governing
4584 boards ~~under their respective jurisdictions~~ of the community and technical colleges.

4585 (b) In addition to the staff positions designated in subdivision (4), subsection (a) of this
4586 section, and section five, article one-b of this chapter, the Vice Chancellor for
4587 Administration, employed pursuant to section two of this article, serves the offices of the
4588 ~~chancellors~~ chancellor to discharge jointly the duties and responsibilities of the council
4589 ~~and commission~~.

4590 (c) Suitable offices for the Vice Chancellor of Administration and other staff shall be
4591 provided in Kanawha County.

4592 58. West Virginia Code §18B-4-2 is hereby amended as follows:

4593 **§18B-4-2. Employment of vice chancellor for administration; office; powers and**
4594 **duties generally.**

4595 (a) ~~By and with the advice and consent of the council, the commission~~ The council shall

4596 employ a vice chancellor for administration who may not be dismissed without the
4597 consent of the council:

4598 (1) The individual serving as vice chancellor for administration on the effective date of
4599 this section may continue to serve on an interim basis until the ~~commission and the~~
4600 council ~~have agreed, jointly, on~~ hired a candidate to fill the position;

4601 (2) The interim vice chancellor for administration may be considered as a candidate for
4602 the position;

4603 ~~(3) The position shall be filled on a permanent basis no later than October 1, 2004; and~~

4604 ~~(4)~~ 3 Any vacancy occurring in this position shall be filled pursuant to the requirements of
4605 this section.

4606 (b) Any reference in this chapter or chapter eighteen-c of this code to the senior
4607 administrator means the vice chancellor for administration.

4608 (c) The vice chancellor for administration has a ministerial duty, in consultation with and
4609 under direction of the ~~chancellors~~ chancellor, to perform such functions, tasks and duties
4610 as may be necessary to carry out the policy directives of the council ~~and commission~~
4611 and such other duties as may be prescribed by law.

4612 (d) The vice chancellor for administration shall supervise such professional,
4613 administrative, clerical and other employees as may be necessary to these duties and
4614 shall delineate staff responsibilities as considered desirable and appropriate. It is the
4615 responsibility of the vice chancellor for administration, within the parameters of the total
4616 resources available, to supervise and direct the staff in such a way that the staff and
4617 resource needs of the council, ~~the commission and the offices of the chancellors~~ are
4618 met.

4619 (e) Any employee of the ~~commission or the~~ council whose job duties meet criteria listed
4620 in the system of job classifications as stated in article nine of this chapter is accorded the
4621 job title, compensation and rights established in the article as well as all other rights and
4622 privileges accorded classified employees by the provisions of this code.

4623 (f) The office of the vice chancellor for administration and all personnel, except for the
4624 chancellor for community and technical college education and staff transferred to the
4625 jurisdiction of the council pursuant to subsection (a), section seven, article two-b of this
4626 chapter, who are employed on January 1, 2004, within the higher education central
4627 office and the West Virginia network for educational telecomputing remain under the
4628 jurisdiction of the ~~commission~~ council. ~~Prior to October 1, 2004, any such employee may~~
4629 ~~not be terminated or have his or her salary and benefit levels reduced as the result of the~~
4630 ~~higher education reorganization that occurs on the effective date of this section.~~

4631 (g) The vice chancellor for administration shall follow state and national education trends
4632 and gather data on higher education needs.

4633 (h) The vice chancellor for administration, in accordance with established guidelines and
4634 in consultation with and under the direction of the ~~chancellors~~ chancellor, shall
4635 administer, oversee or monitor all state and federal student assistance and support
4636 programs administered on the state level for the benefit of the community and technical
4637 colleges and their students, including those provided for in chapter eighteen-c of this
4638 code.

4639 (i) The vice chancellor for administration has a fiduciary responsibility to administer the
4640 tuition and registration fee capital improvement revenue bond accounts of the governing
4641 boards.

4642 (j) The vice chancellor for administration shall administer the purchasing system or
4643 systems of the council ~~and commission, the offices of the chancellors~~ and the governing
4644 boards. ~~By mutual agreement, the commission and the council may delegate authority~~
4645 ~~for the purchasing systems or portions thereof to the institution presidents.~~

4646 (k) The ~~vice chancellor for administration is~~ OPE and the council shall be responsible for
4647 the management of the West Virginia network for educational telecomputing (WVNET).
4648 The ~~vice chancellor for administration~~ OPE and the council shall establish a computer
4649 advisory board, which shall be representative of higher education and other users of the
4650 West Virginia network for educational telecomputing as the ~~commission~~ OPE and
4651 council determine appropriate. It is the responsibility of the computer advisory board to
4652 recommend to the ~~commission~~ OPE and the council policies for a statewide shared
4653 computer system.

4654 (l) The central office, under the direction of the vice chancellor for administration, shall
4655 provide necessary staff support to the ~~commission, the council and offices of the~~
4656 ~~chancellors.~~

4657 (m) The vice chancellor for administration may administer any program or service
4658 authorized or required to be performed by the ~~board of trustees or the board of directors~~
4659 ~~on June 30, 2000, and not specifically assigned to another agency. In addition, the vice~~
4660 ~~chancellor for administration may administer any program or service authorized or~~
4661 ~~required to be performed by the commission, council or chancellors, but not assigned~~
4662 ~~specifically to the commission, council or chancellors~~ council. Any such program or
4663 service may include, but is not limited to, telecommunications activities and other
4664 programs and services provided for under grants and contracts from federal and other
4665 external funding sources.

4666 59. West Virginia Code §18B-4-5a is hereby amended as follows:

4667 **§18B-4-5a. Crimes committed on campus of institutions of higher education.**

4668 (a) The president or a designee of each state institution of higher education shall on a
4669 regular and timely basis provide information to the public concerning alleged crimes
4670 occurring on the institution's property which have been reported to a campus police
4671 officer or any other officer of the institution.

4672 (1) A crime is considered reported when:

4673 (A) A campus police officer or other officer of the institution determines that the report is
4674 credible;

4675 (B) The report is submitted in writing and attested to by the victim on forms at the
4676 institution for such purpose; or

4677 (C) The institution is notified by a law-enforcement agency of the reporting of a crime
4678 alleged to have occurred on the institution's property.

4679 (2) Such reports are referred within twenty-four hours to the appropriate law-
4680 enforcement agencies, as defined in section one, article twenty-nine, chapter thirty of
4681 this code, for further investigation.

4682 (b) For the state institutions of higher education under the jurisdiction of the Governing
4683 Board of Marshall University and for the state institution of higher education known as
4684 West Virginia University only, the campus police shall investigate a crime within their
4685 respective jurisdictions for up to thirty days if the county prosecuting attorney does not
4686 reassign the case to another agency sooner.

4687 (c) The information required to be made available to the public regarding the crime

4688 report shall be available within ten days of the report. The information shall include the
4689 nature of the criminal offense, the date of the offense, the general location of the offense
4690 (such as a designation of a specific building or area of the campus) and the time of day
4691 when the offense occurred.

4692 (1) This subsection does not require the release of any information which may disclose
4693 the identity of the victim.

4694 (2) The institution shall withhold the information required to be made available to the
4695 public for a longer period upon certification of investigative need that the information be
4696 withheld from the public.

4697 (A) The certification shall be filed by an officer of one of the investigating law-
4698 enforcement agencies with the president of the institution or the designee to whom the
4699 duties required by this section have been delegated.

4700 (B) The required information may not be withheld after an arrest has been made in
4701 connection with the crime report.

4702 (d) For purposes of this section, "crime" is defined as those offenses required to be
4703 reported under the federal Crime Awareness and Campus Security Act of 1990, as
4704 amended. "Crime" includes murder, rape, robbery, aggravated assault, burglary, motor
4705 vehicle theft and arrests for liquor, drug or weapons laws violations.

4706 (e) The Council and ~~Commission~~ OPE shall provide crime reporting forms to institutions
4707 under their respective jurisdictions and promulgate a rule pursuant to the provisions of
4708 article three-a, chapter twenty-nine-a of this code as necessary to implement this
4709 section.

4710 60. West Virginia Code §18B-4-7 is hereby amended as follows:

4711 **§18B-4-7. Accreditation of institutions of higher education; standards for degrees.**

4712 (a) The council shall make rules for the accreditation of community and technical
4713 colleges in this state and shall determine the minimum standards for conferring degrees.
4714 The ~~commission~~ OPE shall make rules for the accreditation of colleges in this state
4715 except the governing boards of the exempted schools shall make rules for their
4716 respective institutions, and each shall determine the minimum standards for conferring
4717 degrees. The governing boards of the exempted schools shall promulgate rules pursuant
4718 to the provisions of section six, article one of this chapter for the accreditation of their
4719 respective institutions.

4720 (b) An institution of higher education may not confer a degree on any basis of work or
4721 merit below the minimum standards prescribed by the council or ~~commission~~ OPE.

4722 (c) With the approval of the ~~commission~~ OPE and subject to subsections (e), (f) and (g)
4723 of this section, governing boards of institutions which currently offer substantial
4724 undergraduate course offerings and a master's degree in a discipline are authorized to
4725 grant baccalaureate degrees in that discipline.

4726 (d) Except as otherwise provided in this section, a charter or other instrument containing
4727 the right to confer degrees of higher education status may not be granted by the State of
4728 West Virginia to an institution, association or organization within the state, nor may a
4729 degree be awarded, until the condition of conferring the degree first has been approved
4730 in writing by the council or ~~commission~~ OPE, as appropriate, or by the institution's
4731 governing board in the case of the exempted schools.

4732 (e) To retain the authority to confer degrees pursuant to this section, each institution
4733 shall provide annually to the ~~commission~~ OPE or council, as requested, all information

4734 the ~~commission~~ OPE or council considers necessary to assess the performance of the
4735 institution and to determine whether the institution continues to meet the minimum
4736 standards for conferring degrees. This information includes, but is not limited to, the
4737 following data:

4738 (1) All information current and future federal or state laws and regulations require the
4739 institution to report to the public, to students, to employees or to federal or state
4740 agencies;

4741 (2) Other consumer information the ~~commission~~ OPE or council considers necessary,
4742 including, but not limited to, graduation and retention rates, transfers, post-graduation
4743 placements, loan defaults and numbers and types of student complaints;

4744 (3) A detailed explanation of financial operations including, but not limited to, policies,
4745 formulas and procedures related to calculation, payment and refund for all tuition and
4746 fees; and

4747 (4) An assessment of the adequacy of the institution's curriculum, personnel, facilities,
4748 materials and equipment to meet the minimum standards for conferring degrees.

4749 (f) The ~~commission~~ OPE and council may conduct on-site reviews to evaluate an
4750 institution's academic standards, may conduct financial audits, or may require the
4751 institution to perform these audits and provide detailed data to the ~~commission~~ OPE or
4752 council.

4753 (g) The ~~commission~~ OPE or council shall revoke an institution's authority to confer
4754 degrees when the institution's governing body, chief executive officer, or both, have
4755 done any one or more of the following:

4756 (1) Failed to maintain the minimum standards for conferring degrees; or

4757 (2) Willfully provided false, misleading or incomplete information to the ~~commission~~ OPE
4758 or council.

4759 (h) The ~~commission~~ OPE and council each shall compile the information collected
4760 pursuant to subdivisions (e), (f) and (g) of this section and submit a report on the
4761 information to the Legislative Oversight Commission on Education Accountability
4762 annually beginning December 1, 2012. The ~~commission~~ OPE and council each shall
4763 make the information and report available to the public in a form and manner that is
4764 accessible to the general public, including, but not limited to, posting on its website.

4765 61. West Virginia Code §18B-4-8 is hereby amended as follows:

4766 **§18B-4-8. West Virginia Anatomical Board; powers and duties relating to**
4767 **anatomical gifts; requisition of bodies; autopsies; transportation of bodies;**
4768 **expenses of preservation.**

4769 (a) The West Virginia Anatomical Board, previously created herein, is hereby
4770 reestablished ~~under the authority of the Higher Education Policy Commission~~ and shall
4771 consist of the following four members, or their designee:

4772 (1) The Dean of the Marshall University School of Medicine;

4773 (2) The Dean of the West Virginia University School of Medicine;

4774 (3) The Dean of the West Virginia University School of Dentistry; and

4775 (4) The Dean of the West Virginia School of Osteopathic Medicine.

4776 (b) For purposes of this section:

4777 (4), "Board" means the West Virginia Anatomical Board; and

4778 ~~(2) "Commission" means the West Virginia Higher Education Policy Commission.~~

4779 (c) The responsibilities of the board shall include:

4780 (1) Making requisition for, receiving and making disposition of dead human bodies for
4781 the scientific and educational uses and purposes of higher education institutions within
4782 the state and elsewhere; and

4783 (2) Keeping a full and complete record of its transactions, showing, among other things,
4784 every dead human body coming under its authority, giving name, sex, age, date of
4785 death, place from which received and when and from whom received, which record shall
4786 be open at all times for the inspection of the Attorney General and any prosecuting
4787 attorney in the state.

4788 (d) The ~~commission~~ board may promulgate legislative rules pursuant to article three-a,
4789 chapter twenty-nine-a of this code in order to effectuate the provisions of this section.

4790 (e) Members of the board shall not be entitled to, or receive, any compensation for
4791 services rendered in their capacity as members of the board.

4792 (f) The board shall operate in compliance with the Revised Anatomical Gift Act under
4793 article nineteen, chapter sixteen of this code.

4794 62. West Virginia Code §18B-4-9 is hereby amended as follows:

4795 **§18B-4-9. Development of services and facilities for student veterans.**

4796 (a) Legislative findings. -- The Legislature finds that veterans of the Armed Forces of the
4797 United States that attend institutions of higher education in this state have many unique
4798 needs, issues and concerns that most traditional students do not have. Many of these
4799 veterans have had or will be subject to multiple deployments to active duty, including

4800 overseas deployment, resulting in challenges to their pursuit of higher education.

4801 (b) Legislative intent. -- It is the intent of the Legislature that state institutions of higher
4802 education provide adequate services and facilities for student veterans in order to better
4803 serve their unique needs and to make West Virginia's state institutions of higher
4804 education veteran-friendly.

4805 (c) The ~~commission~~, council and each state institution of higher education shall establish
4806 and implement measures to assure that veterans enrolled in the institutions receive
4807 services and are provided facilities appropriate for their needs, that student veterans
4808 complete programs of study and earn degrees, and that the institutions become veteran-
4809 friendly by actively and effectively providing academic and social support and assistance
4810 to student veterans. The measures shall include, but are not limited to, the following:

4811 (1) Establishing veteran-friendly community and technical college degree programs
4812 which recognize and award academic credit toward degrees for various types of
4813 technical and vocational military training and experience;

4814 (2) Developing policies for each state institution of higher education to grant academic
4815 credit for Armed Forces experiences;

4816 (3) Developing programs to encourage student veterans to share their specialized
4817 experience and knowledge gained through military service by making presentations in
4818 class, public school programs and local community organizations;

4819 (4) Establishing and sponsoring an organization for student veterans on campus and
4820 encouraging other veteran-friendly organizations;

4821 (5) Appointing and training specific faculty within each degree program or major as
4822 liaisons and contacts for student veterans;

4823 (6) Providing information about programs that grant credit for prior learning to student
4824 veterans and potential student veterans;

4825 (7) Coordinating existing disability services on campus with veteran disability services
4826 available from the United States Department of Veterans Affairs, other federal and state
4827 agencies, and private resources;

4828 (8) Designating individuals to provide financial and psychological counseling services on
4829 each campus who are trained to effectively respond to the needs of veterans and to
4830 provide services or referrals to services to fulfill these needs for student veterans, and to
4831 the extent practicable, providing those services and programs in one location;

4832 (9) Developing training materials on responding to student veteran needs to be available
4833 for continued professional development of counselors to student veterans;

4834 (10) Facilitating regular statewide meetings for all personnel at state institutions of higher
4835 education who regularly provide specific services to student veterans to discuss and
4836 develop best practices, exchange ideas and experiences, and hear presentations by
4837 individuals with generally accepted expertise in areas of the various needs of student
4838 veterans;

4839 (11) Gathering data on the status of student veterans, including their graduation rates,
4840 comparing that rate with the graduation rate of other students in the institution, and
4841 reporting those results to appropriate state and federal agencies, including the West
4842 Virginia Legislature;

4843 (12) Establishing a program to create a collaborative relationship between student
4844 veterans and alumni of the institution, and with prospective employers to facilitate and
4845 provide employment as well as social opportunities to graduating student veterans;

4846 (13) Developing and facilitating communications between state institutions of higher
4847 education and various veteran organizations in the state to advance veteran causes that
4848 benefit student veterans; and

4849 (14) Coordinating among all relevant departments within each state institution of higher
4850 education including but not limited to admissions, the registrar, the bursar, the veterans
4851 advocate and financial aid to ensure that relevant deadlines or time-lines are met for
4852 certifying veterans' enrollment as early as practicable to ensure that assistance is
4853 received from the U.S. Department of Veterans Affairs (DVA) in a timely fashion.
4854 Measures to achieve greater coordination shall include but are not limited to:

4855 (A) Identifying applicants who are veterans as early as possible;

4856 (B) Taking affirmative steps to reach out to veteran applicants to inform them of relevant
4857 policies, time-lines or deadlines for receiving veterans assistance;

4858 (C) Developing a communications plan between departments, applicants and students to
4859 ensure that deadlines or time-lines are being met;

4860 (D) Developing plans to assist students when U.S. Department of Veterans Affairs
4861 benefits are not received in a timely fashion. Such plans could include forbearance of
4862 payment deadlines, short-term loans, grants, or a revolving fund.

4863 (E) Making every effort to provide sufficient class sections to meet the needs of students
4864 for classes which are required for graduation, including where appropriate, giving
4865 student veterans priority registration.

4866 (d) Veterans Advocates. -- Each state institution of higher education shall appoint or
4867 designate and train a person, preferably a veteran, to serve as a veterans advocate on
4868 its campus. ~~The commission and council~~ Each state institution of higher education shall

4869 also provide training for veterans advocates at each of the institutions ~~under their~~
4870 ~~respective jurisdictions~~. The veterans advocate shall serve as the primary point of
4871 contact and campus advocate for current and prospective students who are veterans of
4872 the Armed Forces of the United States or are current members of the Armed Forces of
4873 the United States, including reserve components of the National Guard of this state or
4874 any other state. The duties and responsibilities of the veterans advocate include, but are
4875 not limited to the following:

4876 (1) Assist and facilitate student veterans in utilizing services, resources and facilities
4877 available at the institution; and

4878 (2) To the extent resources are available for such purposes, provide services, programs
4879 and assistance to current and prospective student veterans designed to encourage,
4880 promote and facilitate the recruitment, retention and academic success of such students.

4881 (e) The ~~commission~~ OPE and council jointly shall submit a report to the Legislature on
4882 September 1, annually, on the progress toward implementing this section.

4883 63. West Virginia Code §18B-4-10 is hereby amended as follows:

4884 **§18B-4-10. Course completion for students called to military duty; rule required.**

4885 (a) As used in this section, "called to military duty" means called or ordered to state or
4886 federal active service, inactive-duty training or annual training in any active duty or
4887 reserve component of the Armed Forces of the United States or of the National Guard of
4888 this state or any other state.

4889 (b) In accordance with the provisions of article three-a, chapter twenty-nine-a of this
4890 code, the ~~commission~~ OPE and council jointly shall propose and implement a rule
4891 providing for uniform course completion for students who are enrolled at the state

4892 institutions of higher education under their respective jurisdictions when those students
4893 are called to military duty.

4894 (1) The rule shall be as uniform among the institutions as is practicable and shall take
4895 into consideration the unique conditions or circumstances of each institution.

4896 (2) The intent of the rule is to ensure that enrolled students who are called to military
4897 duty are afforded a fair and efficient procedure of withdrawing from classes, completing
4898 course work or securing a leave of absence from course attendance, when feasible. The
4899 rule also shall provide for maintaining the academic integrity of the course work in a
4900 manner that is reasonably accommodating to the student under the circumstances.

4901 (3) The ~~commission~~ OPE and council shall consider and include the following elements
4902 when developing the rule:

4903 (A) Discipline appropriate options which allow a student to withdraw from courses
4904 without penalty; earn credit for work completed in a course; receive an incomplete grade
4905 and make up the course work at a later time; or secure a leave of absence from course
4906 attendance;

4907 (B) For students who withdraw from classes during an academic term and who do not
4908 receive full credit for completing classes in which they are enrolled, provision for
4909 obtaining a full or partial refund of tuition, fees and room and board fees paid to the
4910 institution; and

4911 (C) Other measures as the ~~commission~~ OPE and council consider necessary or effective
4912 to support, accommodate and encourage the students to continue and successfully
4913 complete their education programs.

4914 (c) The rule required by this section is superceded by and may not conflict in any way

4915 with the following provisions:

4916 (1) Educational leave of absence for active duty National Guard or other reserve
4917 components of the Armed Forces as set forth in section one-a, article one-f, chapter
4918 fifteen of this code for students who are subject to these provisions; and

4919 (2) Applicable federal laws, rules or regulations.

4920 64. West Virginia Code §18B-5-3 is hereby amended as follows:

4921 **§18B-5-3. Authority to contract for programs, services and facilities.**

4922 The governing boards, the ~~Commission~~ OPE and the Council are authorized and
4923 empowered to enter into contracts and expend funds for programs, services and
4924 facilities provided by public and private education institutions, associations, boards,
4925 agencies, consortia, corporations, partnerships, individuals and local, state and federal
4926 governmental bodies within and outside of West Virginia in order that maximum higher
4927 education opportunities of high quality may be provided to the citizens of the state in the
4928 most economical manner. In no event may a contract for such services and facilities be
4929 entered into unless the ~~Commission~~ OPE, the Council or the governing boards have
4930 determined that such services and facilities are necessary and would be at a savings to
4931 the state.

4932 65. West Virginia Code §18B-5-4 is hereby amended as follows:

4933 **§18B-5-4. Purchase or acquisition of materials, supplies, equipment, services and**
4934 **printing.**

4935 (a) The council, ~~commission~~ OPE and each governing board shall purchase or acquire
4936 all materials, supplies, equipment, services and printing required for their respective

4937 needs: Provided, That the governing boards under the jurisdiction of the ~~commission~~
4938 OPE, including the exempted schools, are subject to subsection (d) of this section.

4939 (b) The ~~commission~~ OPE and council jointly shall adopt rules governing and controlling
4940 acquisitions and purchases in accordance with this section: Provided, That these rules
4941 do not apply to the exempted schools and the governing boards of the exempted
4942 schools shall adopt their own rules consistent with this section: Provided, however, That
4943 the joint rules shall provide for appropriate deference to the value judgments of
4944 governing boards under the jurisdiction of the ~~commission~~ OPE. The rules shall ensure
4945 that the following procedures are followed:

4946 (1) No person is precluded from participating and making sales thereof to the council,
4947 ~~commission~~ OPE or governing board except as otherwise provided in section five of this
4948 article. Providing consulting services such as strategic planning services does not
4949 preclude or inhibit the governing boards, council or ~~commission~~ OPE from considering a
4950 qualified bid or response for delivery of a product or a commodity from the individual
4951 providing the services;

4952 (2) Specifications are established and prescribed for materials, supplies, equipment,
4953 services and printing to be purchased;

4954 (3) Purchase order, requisition or other forms as may be required are adopted and
4955 prescribed;

4956 (4) Purchases and acquisitions in such quantities, at such times and under contract, are
4957 negotiated for and made in the open market or through other accepted methods of
4958 governmental purchasing as may be practicable in accordance with general law;

4959 (5) Bids are advertised on all purchases exceeding \$50,000 and made by means of

4960 sealed or electronically submitted bids and competitive bidding or advantageous
4961 purchases effected through other accepted governmental methods and practices.
4962 Competitive bids are not required for purchases of \$50,000 or less.

4963 (6) Notices for acquisitions and purchases for which competitive bids are being solicited
4964 are posted either in the purchasing office of the specified institution involved in the
4965 purchase or by electronic means available to the public at least five days prior to making
4966 the purchases. The rules shall ensure that the notice is available to the public during
4967 business hours;

4968 (7) Purchases are made in the open market;

4969 (8) Vendors are notified of bid solicitation and emergency purchasing; and

4970 (9) No fewer than three bids are obtained when bidding is required, except if fewer than
4971 three bids are submitted, an award may be made from among those received.

4972 (c) When a state institution of higher education submits a contract, agreement or other
4973 document to the Attorney General for approval as to form as required by this chapter,
4974 the following conditions apply:

4975 (1) "Form" means compliance with the Constitution and statutes of the State of West
4976 Virginia;

4977 (2) The Attorney General does not have the authority to reject a contract, agreement or
4978 other document based on the substantive provisions in the contract, agreement or
4979 document or any extrinsic matter as long as it complies with the Constitution and
4980 statutes of this state;

4981 (3) Within fifteen days of receipt, the Attorney General shall notify the appropriate state

4982 institution of higher education in writing that the contract, agreement or other document
4983 is approved or disapproved as to form. If the contract, agreement or other document is
4984 disapproved as to form, the notice of disapproval shall identify each defect that supports
4985 the disapproval; and

4986 (4) If the state institution elects to challenge the disapproval by filing a writ of mandamus
4987 or other action and prevails, then the Attorney General shall pay reasonable attorney
4988 fees and costs incurred.

4989 (d) Pursuant to this subsection, the governing boards under the jurisdiction of the
4990 ~~commission~~ OPE, including the exempted schools, respectively, may carry out the
4991 following actions:

4992 (1) Purchase or acquire all materials, supplies, equipment, services and printing required
4993 for the governing board without approval from the ~~commission~~ OPE or the ~~Vice~~
4994 ~~Chancellor for Administration~~ and may issue checks in advance to cover postage as
4995 provided in subsection (f) of this section;

4996 (2) Purchase from cooperative buying groups, consortia, the federal government or from
4997 federal government contracts, or from West Virginia public institution of higher education
4998 contracts, if the materials, supplies, services, equipment or printing to be purchased is
4999 available from these groups and if this would be the most financially advantageous
5000 manner of making the purchase;

5001 (3) Select and acquire by contract or lease all grounds, buildings, office space or other
5002 space, and capital improvements, including equipment, if the rental is necessarily
5003 required by the governing board; and

5004 (4) Use purchase cards.

5005 (e) The governing boards shall adopt sufficient accounting and auditing procedures and
5006 promulgate and adopt appropriate rules subject to section six, article one of this chapter
5007 to govern and control acquisitions, purchases, leases and other instruments for grounds,
5008 buildings, office or other space, and capital improvements, including equipment, or
5009 lease-purchase agreements.

5010 (f) The council, ~~commission~~ OPE or each governing board may issue a check in
5011 advance to a company supplying postage meters for postage used by that board, the
5012 council or ~~commission~~ OPE and by the state institutions of higher education under their
5013 jurisdiction.

5014 (g) When a purchase is to be made by bid, any or all bids may be rejected. However, all
5015 purchases based on advertised bid requests shall be awarded to the lowest responsible
5016 bidder taking into consideration the qualities of the articles to be supplied, their
5017 conformity with specifications, their suitability to the requirements of the governing
5018 boards, council or ~~commission~~ OPE and delivery terms. The preference for resident
5019 vendors as provided in section thirty-seven, article three, chapter five-a of this code
5020 applies to the competitive bids made pursuant to this section.

5021 (h) The governing boards, council and ~~commission~~ OPE shall maintain a purchase file,
5022 which shall be a public record and open for public inspection.

5023 (1) After the award of the order or contract, the governing boards, council and
5024 ~~commission~~ OPE shall indicate upon the successful bid the following information:

5025 (A) Designation as the successful bid;

5026 (B) The reason any bids were rejected; and

5027 (C) The reason for rejection, if the mathematical low vendor was not awarded the order

5028 or contract.

5029 (2) A record in the purchase file may not be destroyed without the written consent of the
5030 Legislative Auditor. Those files in which the original documentation has been held for at
5031 least one year and in which the original documents have been reproduced and archived
5032 on microfilm or other equivalent method of duplication may be destroyed without the
5033 written consent of the Legislative Auditor.

5034 (3) All files, no matter the storage method, shall be open for inspection by the Legislative
5035 Auditor upon request.

5036 (i) The ~~commission~~ OPE and council, also jointly, shall promulgate rules to prescribe
5037 qualifications to be met by any person who is to be employed as a buyer at a state
5038 college and university or community and technical college pursuant to this section.
5039 These rules shall require that a person may not be employed as a buyer unless that
5040 person, at the time of employment, has one of the following qualifications:

5041 (1) Is a graduate of an accredited college or university; or

5042 (2) Has at least four years' experience in purchasing for any unit of government or for
5043 any business, commercial or industrial enterprise.

5044 (j) Any person making purchases and acquisitions pursuant to this section shall execute
5045 a bond in the penalty of \$50,000, payable to the State of West Virginia, with a corporate
5046 bonding or surety company authorized to do business in this state as surety thereon, in
5047 form prescribed by the Attorney General and conditioned upon the faithful performance
5048 of all duties in accordance with this section and sections five through eight, inclusive, of
5049 this article and the rules of the governing board and the council and ~~commission~~ OPE. In
5050 lieu of separate bonds for these buyers, a blanket surety bond may be obtained. The

5051 bond shall be filed with the Secretary of State and the cost of the bond shall be paid from
5052 funds appropriated to the applicable governing board or the council or ~~commission~~ OPE.

5053 (k) All purchases and acquisitions shall be made in consideration and within limits of
5054 available appropriations and funds and in accordance with applicable provisions of
5055 article two, chapter five-a of this code relating to expenditure schedules and quarterly
5056 allotments of funds. Notwithstanding any other provision of this code to the contrary, only
5057 those purchases exceeding the dollar amount for competitive sealed bids in this section
5058 are required to be encumbered. Such purchases may be entered into the state's
5059 centralized accounting system by the staff of the ~~commission~~ OPE, council or governing
5060 boards to satisfy the requirements of article two, chapter five-a of this code to determine
5061 whether the amount of the purchase is within the quarterly allotment of the ~~commission~~
5062 OPE, council or governing board, is in accordance with the approved expenditure
5063 schedule and otherwise conforms to the article: Provided, That, notwithstanding the
5064 foregoing provisions of this subsection or any other provision of this code to the contrary,
5065 purchases by exempted schools are not required to be encumbered.

5066 (l) The governing boards, council or ~~commission~~ OPE may make requisitions upon the
5067 State Auditor for a sum to be known as an advance allowance account, not to exceed
5068 five percent of the total of the appropriations for the governing board, council or
5069 ~~commission~~ OPE, and the State Auditor shall draw a warrant upon the Treasurer for
5070 those accounts. All advance allowance accounts shall be accounted for by the
5071 applicable governing board or the council or ~~commission~~ OPE once every thirty days or
5072 more often if required by the State Auditor.

5073 (m) Contracts entered into pursuant to this section shall be signed by the applicable
5074 governing board or the council or ~~commission~~ OPE in the name of the state and shall be

5075 approved as to form by the Attorney General. A contract which requires approval as to
5076 form by the Attorney General is considered approved if the Attorney General has not
5077 responded within fifteen days of presentation of the contract. A contract or a change
5078 order for that contract and notwithstanding any other provision of this code to the
5079 contrary, associated documents such as performance and labor/material payments,
5080 bonds and certificates of insurance which use terms and conditions or standardized
5081 forms previously approved by the Attorney General and do not make substantive
5082 changes in the terms and conditions of the contract do not require approval as to form by
5083 the Attorney General. The Attorney General shall make a list of those changes which he
5084 or she considers to be substantive and the list, and any changes to the list, shall be
5085 published in the State Register. A contract that exceeds the dollar amount requiring
5086 competitive sealed bids in this section shall be filed with the State Auditor. If requested
5087 to do so, the governing boards, council or ~~commission~~ OPE shall make all contracts
5088 available for inspection by the State Auditor. The governing board, council or
5089 ~~commission~~ OPE, as appropriate, shall prescribe the amount of deposit or bond to be
5090 submitted with a bid or contract, if any, and the amount of deposit or bond to be given for
5091 the faithful performance of a contract.

5092 (n) If the governing board, council or ~~commission~~ OPE purchases or contracts for
5093 materials, supplies, equipment, services and printing contrary to sections four through
5094 seven, inclusive, of this article or the rules pursuant to this article, the purchase or
5095 contract is void and of no effect.

5096 (o) A governing board or the council or ~~commission~~ OPE, as appropriate, may request
5097 the director of purchasing to make available the facilities and services of that department
5098 to the governing boards, council or ~~commission~~ OPE in the purchase and acquisition of
5099 materials, supplies, equipment, services and printing. The director of purchasing shall

5100 cooperate with that governing board, council or ~~commission~~ OPE, as appropriate, in all
5101 such purchases and acquisitions upon that request.

5102 (p) Each governing board or the council or ~~commission~~ OPE, as appropriate, may permit
5103 affiliated organizations, state institutions of higher education, or private institutions of
5104 higher education to join as purchasers on purchase contracts for materials, supplies,
5105 services and equipment entered into by that governing board or the council or
5106 ~~commission~~ OPE. An affiliated organization, state institution of higher education or
5107 private institution desiring to join as purchaser on purchase contracts shall file with that
5108 governing board or the council or ~~commission~~ OPE, as appropriate, an affidavit signed
5109 by the president or designee of the affiliated organization, state institution of higher
5110 education, or private institution requesting that it be authorized to join as purchaser on
5111 purchase contracts of that governing board or the council or ~~commission~~ OPE, as
5112 appropriate. The affiliated organization, state institution of higher education or private
5113 institution shall agree that it is bound by such terms and conditions as that governing
5114 board or the council or ~~commission~~ OPE may prescribe and that it will be responsible for
5115 payment directly to the vendor under each purchase contract.

5116 (q) Notwithstanding any other provision of this code to the contrary, the governing
5117 boards, council and ~~commission~~ OPE, as appropriate, may make purchases from
5118 cooperative buying groups, consortia, the federal government or from federal
5119 government contracts if the materials, supplies, services, equipment or printing to be
5120 purchased is available from that source, and purchasing from that source would be the
5121 most financially advantageous manner of making the purchase.

5122 (r) An independent performance audit of all purchasing functions and duties which are
5123 performed at any state institution of higher education shall be performed at least once in

5124 each three-year period. The Joint Committee on Government and Finance shall require
5125 a performance audit and the governing boards, council and ~~commission~~ OPE, as
5126 appropriate, are responsible for paying the cost of the audit from funds appropriated to
5127 the governing boards, council or ~~commission~~ OPE.

5128 (1) The governing board shall provide for independent performance audits of all
5129 purchasing functions and duties on its campus at least once in each three-year period.

5130 (2) Each audit shall be inclusive of the entire time period that has elapsed since the date
5131 of the preceding audit.

5132 (3) Copies of all appropriate documents relating to any audit performed by a governing
5133 board shall be furnished to the Joint Committee on Government and Finance and the
5134 Legislative Oversight Commission on Education Accountability within thirty days of the
5135 date the audit report is completed.

5136 (s) The governing boards shall require each institution under their respective jurisdictions
5137 to notify and inform every vendor doing business with that institution of section fifty-four,
5138 article three, chapter five-a of this code, also known as the Prompt Pay Act of 1990.

5139 (t) Consultant services, such as strategic planning services, do not preclude or inhibit the
5140 governing boards, council or ~~commission~~ OPE from considering any qualified bid or
5141 response for delivery of a product or a commodity because of the rendering of those
5142 consultant services.

5143 (u) Purchasing card use may be expanded by the council, ~~commission~~ OPE and state
5144 institutions of higher education pursuant to this subsection.

5145 (1) The council and ~~commission~~ OPE jointly shall establish procedures to be
5146 implemented by the council, ~~commission~~ OPE and any state college and university or

5147 community and technical college using purchasing cards. The governing boards of the
5148 exempted schools shall establish procedures to be implemented by their respective
5149 institutions. The procedures shall ensure that each meets the following conditions:

5150 (A) Appropriate use of the purchasing card system;

5151 (B) Full compliance with article three, chapter twelve of this code relating to the
5152 purchasing card program; and

5153 (C) Sufficient accounting and auditing procedures for all purchasing card transactions.

5154 (2) Notwithstanding any other provision of this code to the contrary, the council,
5155 ~~commission~~ OPE and any institution authorized pursuant to subdivision (3) of this
5156 subsection may use purchasing cards for the following purposes:

5157 (A) Payment of travel expenses directly related to the job duties of the traveling
5158 employee, including, but not limited to, fuel and food; and

5159 (B) Payment of any routine, regularly scheduled payment, including, but not limited to,
5160 utility payments and real property rental fees.

5161 (3) The ~~commission~~ OPE and council each shall evaluate the capacity of each state
5162 college and university and community and technical college under its jurisdiction for
5163 complying with the procedures established pursuant to subdivision (2) of this subsection.
5164 The ~~commission~~ OPE and council each shall authorize expanded use of purchasing
5165 cards pursuant to that subdivision for any state college and university and community
5166 and technical college it determines has the capacity to comply.

5167 66. West Virginia Code §18B-5-5 is hereby amended as follows:

5168 **§18B-5-5. Prequalification disclosure by vendors; register of vendors; exceptions;**

5169 **suspension of vendors.**

5170 (a) Every person, firm or corporation selling or offering to sell to the ~~commission~~ OPE or
5171 the governing boards, upon competitive bids or otherwise, any materials, equipment,
5172 services or supplies in excess of \$25,000:

5173 (1) Shall comply with the provisions of section twelve, article three, chapter five-a of this
5174 code;

5175 (2) Shall file with the director of the Purchasing Division of the State of West Virginia the
5176 affidavit required herein; and (3) If presently in compliance with said section may not be
5177 required to requalify thereunder to be able to transact business with the ~~commission~~
5178 OPE or the governing boards.

5179 (b) Any person, firm or corporation failing or refusing to comply with said statute as
5180 herein required shall be ineligible to sell or offer to sell materials, supplies, equipment,
5181 services or printing to the ~~commission~~ OPE or the governing boards as hereinafter set
5182 forth. Any person suspended under the provisions of section thirty-two, article three,
5183 chapter five-a of this code is not eligible to sell or offer to sell materials, supplies,
5184 equipment, services or printing to the ~~commission~~ OPE or the governing boards. The
5185 ~~commission~~ OPE or the governing boards may suspend, for a period not to exceed one
5186 year, the right and privilege of a person to bid on purchases of the ~~commission~~ OPE or
5187 the governing boards when there is reason to believe that such person has violated any
5188 of the provisions in sections four through seven of this article or the rules of the
5189 governing boards pursuant thereto. Any person whose right to bid has been so
5190 suspended shall be notified thereof by a letter posted by registered mail containing the
5191 reason for the suspension and has the right to have the action of the ~~commission~~ OPE
5192 or the governing board, as applicable, reviewed in accordance with section thirty-three,

5193 article three, chapter five-a of this code. A vendor who has been debarred pursuant to
5194 the provisions of sections thirty-three-a through thirty-three-f, article three, chapter five-a
5195 of this code, may not bid on or be awarded a contract under this section.

5196 67. West Virginia Code §18B-5-6 is hereby amended as follows:

5197 **§18B-5-6. Other code provisions relating to purchasing and design-build**
5198 **procurement not controlling; exceptions; criminal provisions and penalties;**
5199 **financial interest of governing boards, etc.; receiving anything of value from**
5200 **interested party and penalties therefor; application of bribery statute.**

5201 (a) The provisions of article three, chapter five-a of this code and article twenty-two-a,
5202 chapter five of this code do not control or govern design-build procurement or the
5203 purchase, acquisition or other disposition of any equipment, materials, supplies, services
5204 or printing by the ~~commission~~ OPE or the governing boards, except as provided in
5205 sections four through seven, inclusive, of this article. Sections twenty-nine, thirty and
5206 thirty-one, article three, chapter five-a of this code apply to all purchasing activities of the
5207 ~~commission~~ OPE and the governing boards.

5208 (b) Notwithstanding any provision of this code to the contrary, state institutions of higher
5209 education, through their governing boards, may enter into design-build contracts and are
5210 not subject to the provisions of article twenty-two-a, chapter five of this code and may
5211 also utilize other commonly accepted methods of procurement and contracting for
5212 construction projects: Provided, That such state institution of higher education meets the
5213 following criteria:

5214 (1) Employs at least one Leadership in Energy and Environmental Design (LEED)
5215 certified administrator; and

5216 (2) Employs at least one Certified Facilities Manager (CFM) as credentialed by the

5217 International Facility Management Association, or employs at least one Project
5218 Management Professional (PMP) as certified by the Project Management Institute.

5219 (c) Neither the ~~commission~~ OPE, the governing boards, nor any employee of the
5220 ~~commission~~ OPE or governing boards may be financially interested, or have any
5221 beneficial personal interest, directly or indirectly, in the purchase of any equipment,
5222 materials, supplies, services or printing, nor in any firm, partnership, corporation or
5223 association furnishing them, except as may be authorized by the provisions of chapter
5224 six-b of this code. Neither the ~~commission~~ OPE, the governing boards nor any employee
5225 of the ~~commission~~ OPE or governing boards may accept or receive directly or indirectly
5226 from any person, firm or corporation, known by the ~~commission~~ OPE, governing boards
5227 or such employee to be interested in any bid, contract or purchase, by rebate, gift or
5228 otherwise, any money or other thing of value whatsoever or any promise, obligation or
5229 contract for future reward or compensation, except as may be authorized by the
5230 provisions of chapter six-b of this code.

5231 A person who violates any of the provisions of this section is guilty of a misdemeanor
5232 and, upon conviction thereof, shall be imprisoned in jail not less than three months nor
5233 more than one year, or fined not less than \$50 nor more than \$1,000, or both imprisoned
5234 and fined, in the discretion of the court. Any person who violates any provisions of this
5235 section by receiving money or other thing of value under circumstances constituting the
5236 crime of bribery under the provisions of section three, article five-a, chapter sixty-one of
5237 this code shall, upon conviction of bribery, be punished as provided in section nine of
5238 said article.

5239 68. West Virginia Code §18B-5-7 is hereby amended as follows:

5240 **§18B-5-7. Disposition of obsolete and unusable equipment, surplus supplies and**

5241 **other unneeded materials.**

5242 (a) The ~~commission~~ OPE, the council and the governing boards shall dispose of
5243 obsolete and unusable equipment, surplus supplies and other unneeded materials,
5244 either by transfer to other governmental agencies or institutions, by exchange or trade,
5245 or by sale as junk or otherwise. The ~~commission~~ OPE, the council and each governing
5246 board shall adopt rules governing and controlling the disposition of all such equipment,
5247 supplies and materials. The rules shall provide for disposition of the equipment, supplies
5248 and materials as sound business practices warrant under existing circumstances and
5249 conditions and for adequate prior notice to the public of the disposition.

5250 (b) The ~~commission~~ OPE, council or governing board, as appropriate, shall report
5251 biannually to the Legislative Auditor all sales of commodities made during the preceding
5252 biennium. The report shall include a description of the commodities sold, the name of the
5253 buyer to whom each commodity was sold, the price paid by the buyer.

5254 (c) The proceeds of sales or transfers shall be deposited in the state treasury to the
5255 credit on a pro rata basis of the fund or funds from which the purchase of the particular
5256 commodities or expendable commodities was made. The ~~commission~~ OPE, council or
5257 governing board, as appropriate, may charge and assess fees reasonably related to the
5258 costs of care and handling with respect to the transfer, warehousing, sale and
5259 distribution of state property that is disposed of or sold pursuant to the provisions of this
5260 section.

5261 (d) Notwithstanding the provisions of this section, the ~~commission~~ OPE, council or a
5262 governing board may donate equipment, supplies and materials with the approval of the
5263 ~~commission~~ OPE, council or governing board or their designee, as appropriate to any
5264 not for profit entity to promote public welfare.

5265 69. West Virginia Code §18B-5-9 is hereby amended as follows:

5266 **§18B-5-9. Higher education fiscal responsibility.**

5267 (a) The governing boards shall ensure the fiscal integrity of their operations using best
5268 business and management practices.

5269 (1) The practices include at least the following:

5270 (A) Complying with Generally Accepted Accounting Principles of the Governmental
5271 Accounting Standards Board (GAAP); and the Generally Accepted Government Auditing
5272 Standards of the Government Accountability Office (GAGAS);

5273 (B) Operating without material weakness in internal controls as defined by GAAP,
5274 GAGAS and, where applicable, the Office of Management and Budget (OMB) Uniform
5275 Guidance Audit requirements;

5276 (C) Maintaining annual audited financial statements with an unqualified opinion;

5277 (D) Preparing annual audited financial statements as coordinated and directed by the
5278 ~~commission~~ OPE and council, respectively, and as the ~~commission~~ OPE requires to
5279 complete the higher education fund audit;

5280 (E) Maintaining quarterly financial statements certified by the chief financial officer of the
5281 institution; and

5282 (F) Implementing best practices from Sarbanes-Oxley, or adopting the applicable tenets
5283 of Sarbanes-Oxley as best practices.

5284 (2) Each governing board and any affiliated research corporation shall comply with the
5285 OMB Uniform Guidance Audit requirements and are exempt from section fourteen,
5286 article four, chapter twelve of this code.

5287 (3) Within thirty days of the completion of the financial audit report, the governing boards
5288 shall furnish to the ~~commission~~ OPE or council, respectively, copies of the annual
5289 audited financial statements.

5290 (b) The ~~commission~~ OPE and council, each, shall ensure the fiscal integrity of any
5291 electronic process conducted at its offices and by the governing boards under its
5292 respective jurisdiction by applying best business and management practices.

5293 (c) To the maximum extent practicable, each higher education organization shall provide
5294 for its employees to receive their wages via electronic transfer or direct deposit.

5295 (d) Notwithstanding any other provision of this code to the contrary, a purchasing card
5296 may be used by the council, the ~~commission~~ OPE or a governing board of a state
5297 institution of higher education to make any payment authorized by the Auditor, including
5298 regular routine payments and travel and emergency payments. Payments are set at an
5299 amount to be determined by the Auditor.

5300 (1) Subject to approval of the Auditor, an emergency payment and a routine, regularly
5301 scheduled payment, including, but not limited to, utility payments, contracts and real
5302 property rental fees, may exceed this limit by an amount to be determined by the
5303 Auditor.

5304 (2) The council, ~~commission~~ OPE and a governing board of a state institution of higher
5305 education may use a purchasing card for travel expenses directly related to the job
5306 duties of the traveling employee. Where approved by the Auditor, the expenses may
5307 exceed \$5,000 by an amount to be determined by the Auditor. Traveling expenses may
5308 include registration fees and airline and other transportation reservations, if approved by
5309 the president of the institution. Traveling expenses may include purchases of fuel and

5310 food.

5311 (3) The ~~commission~~ OPE, council, and governing boards each shall maintain one
5312 purchasing card for use only in a situation declared an emergency by the appropriate,
5313 director, chancellor or the institution's president. Emergencies may include, but are not
5314 limited to, partial or total destruction of a facility; loss of a critical component of utility
5315 infrastructure; heating, ventilation or air condition failure in an essential academic
5316 building; loss of campus road, parking lot or campus entrance; a technology breach; or a
5317 local, regional, or national emergency situation that has a direct impact on the campus.

5318 (e) Notwithstanding section ten-f, article three, chapter twelve of this code, or any other
5319 provision of this code or law to the contrary, the Auditor shall accept any receiving report
5320 submitted in a format utilizing electronic media. The Auditor shall conduct any audit or
5321 investigation of the council, ~~commission~~ OPE or governing board at its own expense and
5322 at no cost to the council, ~~commission~~ OPE or governing board.

5323 (f) The council and the ~~commission~~ OPE each shall maintain a rule in accordance with
5324 article three-a, chapter twenty-nine-a of this code. The rule shall provide for governing
5325 boards individually or cooperatively to maximize their use of any of the following
5326 purchasing practices that are determined to provide a financial advantage:

5327 (1) Bulk purchasing;

5328 (2) Reverse bidding;

5329 (3) Electronic marketplaces; and

5330 (4) Electronic remitting.

5331 (g) Each governing board may establish a consortium with at least one other governing

5332 board, in the most cost-efficient manner feasible, to consolidate the following operations
5333 and student services:

5334 (1) Payroll operations;

5335 (2) Human resources operations;

5336 (3) Warehousing operations;

5337 (4) Financial transactions;

5338 (5) Student financial aid application, processing and disbursement;

5339 (6) Standard and bulk purchasing; and

5340 (7) Any other operation or service appropriate for consolidation as determined by the
5341 council or ~~commission~~ OPE.

5342 (h) A governing board may charge a fee to the governing board of each institution for
5343 which it provides a service or performs an operation. The fee rate shall be in the best
5344 interest of both the institution being served and the governing board providing the
5345 service.

5346 (i) A governing board may provide the services authorized by this section for the benefit
5347 of any governmental body or public or private institution.

5348 (j) Each governing board shall strive to minimize its number of low-enrollment sections of
5349 introductory courses. To the maximum extent practicable, governing boards shall use
5350 distance learning to consolidate the course sections. The council and ~~commission~~ OPE
5351 shall report the progress of reductions as requested by the Legislative Oversight
5352 Commission on Education Accountability.

5353 (k) A governing board shall use its natural resources and alternative fuel resources to
5354 the maximum extent feasible. The governing board:

5355 (1) May supply the resources for its own use and for use by the governing board of any
5356 other institution;

5357 (2) May supply the resources to the general public at fair market value;

5358 (3) Shall maximize all federal or grant funds available for research regarding alternative
5359 energy sources; and

5360 (4) May develop research parks to further the purpose of this section and to expand the
5361 economic development opportunities in the state.

5362 (l) Any cost-savings realized or fee procured or retained by a governing board pursuant
5363 to this section is retained by the governing board.

5364 (m) Each governing board is authorized, but not required, to implement subsections (f),
5365 (g) and (h) of this section.

5366 If a governing board elects to implement subsection (g) of this section, the following
5367 conditions apply:

5368 (1) The governing board makes the determination regarding any additional operation or
5369 service which is appropriate for consolidation without input from the council or
5370 ~~commission~~ OPE;

5371 (2) The governing board sets the fee charged to the governing board of the institution for
5372 which it provides a service or performs an operation. The fee rate shall be in the best
5373 interest of both the institution being served and the governing board providing the
5374 service and is not subject to approval by the council or ~~commission~~ OPE; and

5375 (3) The governing board may not implement this subdivision in a manner which
5376 supersedes the requirements established in section twelve, article three-c of this
5377 chapter.

5378 (n) The governing boards of the exempted schools, respectively, each shall promulgate
5379 a rule on purchasing procedures in accordance with section six, article one of this
5380 chapter.

5381 70. West Virginia Code §18B-5-11 is hereby amended as follows:

5382 **§18B-5-11. Energy and Water Savings Revolving Loan Program Fund.**

5383 (a) There is created in the state Treasury a special revolving loan fund known as the
5384 "Energy and Water Savings Revolving Loan Fund". The fund is administered by the
5385 ~~commission~~ OPE and used to effectuate the purposes of this section. The fund consists
5386 of moneys received from the following sources:

5387 (1) All appropriations provided by the Legislature for energy and water savings revolving
5388 loans;

5389 (2) Repayment of loans made to state institutions of higher education pursuant to this
5390 section;

5391 (3) Any moneys available from external sources; and

5392 (4) All interest and other income earned from investment of moneys in the fund.

5393 (b) The ~~commission~~ OPE shall utilize moneys in the fund to provide loans to state
5394 institutions of higher education under the jurisdiction of the ~~commission~~ OPE or the
5395 council to finance projects that will achieve significant reductions in campus energy and
5396 water consumption and costs.

5397 (c) The ~~commission~~ OPE shall propose a rule for legislative approval in accordance with
5398 section six, article one of this chapter and article three-a, chapter twenty-nine-a of this
5399 code to implement the provisions of this section. The rule shall provide at least the
5400 following:

5401 (1) Project information required in a loan application;

5402 (2) Criteria for evaluating loan applications;

5403 (3) A method for calculating the terms of loan repayment; and

5404 (4) Other provisions the ~~commission~~ OPE considers necessary to administer the
5405 program in accordance with this section.

5406 (d) Projects shall be considered on a competitive basis. Highest priority is given to
5407 projects guaranteeing the greatest reductions in energy and water consumption and
5408 costs and the earliest loan repayments.

5409 (e) Any balance, including accrued interest and any other returns, in the Energy and
5410 Water Savings Revolving Loan Fund at the end of each fiscal year shall not expire to the
5411 General Revenue Fund, but shall remain in the loan fund and be expended for the
5412 purposes provided by this section. The ~~commission~~ OPE may use up to four percent of
5413 the total loan amount in a fiscal year for administrative expenses incurred in that fiscal
5414 year.

5415 (f) Fund balances may be invested with the state's consolidated investment fund. Any
5416 earnings on the investments shall be used solely for the purpose defined in subsection
5417 (b) of this section.

5418 ~~(g) The Legislature finds that an emergency exists and, therefore, the commission shall~~

5419 ~~propose an emergency rule to implement the provisions of this section in accordance~~
5420 ~~with section six, article one of this chapter and article three a, chapter twenty-nine a of~~
5421 ~~this code by October 1, 2008. The emergency rule may not be implemented without prior~~
5422 ~~approval of the Legislative Oversight Commission on Education Accountability.~~

5423 71. West Virginia Code §18B-6-1a is hereby amended as follows:

5424 **§18B-6-1a. Definitions.**

5425 For the purposes of this article, the following words have the meanings specified unless
5426 the context clearly indicates a different meaning:

5427 (a) "Advisory Council of Classified Employees" or "classified council" means the state
5428 advisory organization of classified employees created pursuant to section five of this
5429 article.

5430 (b) "Advisory Council of Faculty" or "faculty council" means the state advisory
5431 organization of faculty created pursuant to section two of this article.

5432 (c) "Advisory Council of Students" or "student advisory council" means the state advisory
5433 organization of students created pursuant to section four of this article.

5434 (d) "Classified employee", in the singular or plural, means any regular full-time or regular
5435 part-time employee of a governing board, the ~~commission~~ OPE, the council or the West
5436 Virginia Network for Educational Telecomputing who holds a position that is assigned a
5437 particular job title and pay grade in accordance with the personnel classification system
5438 established by law.

5439 (e) "Community and technical college" means Eastern West Virginia Community and
5440 Technical College, Marshall Community and Technical College, New River Community

5441 and Technical College, West Virginia Northern Community and Technical College, Blue
5442 Ridge Community and Technical College, Southern West Virginia Community and
5443 Technical College, West Virginia State Community and Technical College, the
5444 Community and Technical College at West Virginia University Institute of Technology,
5445 West Virginia University at Parkersburg and any other community and technical college
5446 so designated by the Legislature.

5447 (f) "Council" means the West Virginia Council for Community and Technical College
5448 Education created pursuant to section three, article two-b of this chapter.

5449 (g) "Institutional Classified Employee Council" or "staff council" means the advisory
5450 group of classified employees formed at a state institution of higher education pursuant
5451 to section six of this article.

5452 (h) "Institutional faculty Senate", "faculty Senate" or "faculty assembly" means the
5453 advisory group of faculty formed at a state institution of higher education pursuant to
5454 section three of this article.

5455 (i) "State institution of higher education", in the singular or plural, means the institutions
5456 as defined in section two, article one of this chapter and, additionally, Pierpont
5457 Community and Technical College, a division of Fairmont State University, Marshall
5458 Community and Technical College, New River Community and Technical College,
5459 Potomac State College of West Virginia University, Robert C. Byrd Health Sciences
5460 Charleston Division of West Virginia University, Blue Ridge Community and Technical
5461 College, West Virginia State Community and Technical College, West Virginia University
5462 at Parkersburg, West Virginia University Institute of Technology, the Community and
5463 Technical College at West Virginia University Institute of Technology, ~~the Higher~~
5464 ~~Education Policy Commission~~ OPE, the West Virginia Council for Community and

5465 Technical College Education, the West Virginia Network for Educational Telecomputing
5466 and any other institution so designated by the Legislature.

5467 72. West Virginia Code §18B-6-2 is hereby amended as follows:

5468 **§18B-6-2. State advisory council of faculty.**

5469 (a) There is continued the state advisory council of faculty.

5470 (b) Election of members and terms of office. --

5471 (1) During the month of April of each odd-numbered year, each president of a state
5472 institution of higher education, at the direction of the faculty council and in accordance
5473 with procedures established by the faculty council, shall convene a meeting or otherwise
5474 institute a balloting process to elect one faculty member from each institution of higher
5475 education to serve on the faculty council.

5476 (2) Terms of the members are for two years and begin on July 1, of each odd-numbered
5477 year. Members are eligible to succeed themselves.

5478 (3) For the year two thousand four only, each president of an administratively linked
5479 community and technical college shall consult with the faculty council during the month
5480 of July to establish procedures and convene a meeting or otherwise institute a balloting
5481 process to elect one faculty member from that institution to serve on the faculty council.
5482 Members so elected shall take office upon election and serve until the next regularly
5483 scheduled election held pursuant to this section; thereafter, faculty members elected to
5484 represent administratively linked community and technical colleges serve a regular two-
5485 year term.

5486 (c) The faculty council shall meet at least once each quarter and may meet at such other

5487 times as called by the chairperson or by a majority of its members. One of the quarterly
5488 meetings shall be during the month of July, at which meeting the faculty council shall
5489 elect a chairperson from among its members. The chairperson may serve no more than
5490 two consecutive terms as chair. A member may not vote by proxy at the election. In the
5491 event of a tie in the last vote taken for such election, a member authorized by the faculty
5492 council shall select the chairperson by lot from the names of those persons tied.
5493 Immediately following the election of a chairperson, and in the manner prescribed by this
5494 section for the election of a chairperson, the faculty council shall elect a member to
5495 preside over meetings in the absence of the chairperson. If the chairperson vacates the
5496 position, the faculty council shall meet and elect a new chairperson to fill the unexpired
5497 term within thirty days following the vacancy.

5498 (d) The faculty council, through its chairperson and in any appropriate manner, shall
5499 communicate to the ~~commission~~ OPE or the council, as appropriate, matters of higher
5500 education in which the faculty members have an interest.

5501 (e) The ~~commission~~ OPE and council each shall meet annually between the months of
5502 October and December with the faculty council to discuss matters of higher education in
5503 which the faculty members or the ~~commission~~ OPE or council may have an interest.

5504 (f) Members of the faculty council serve without compensation. Members are entitled to
5505 reimbursement for actual and necessary expenses, including travel expenses, incurred
5506 in the performance of their official duties. Expenses are paid from funds allocated to the
5507 state institution of higher education which the member serves.

5508 (g) The faculty council shall prepare minutes of its meetings, which minutes shall be
5509 available, upon request, to any faculty member of a state institution of higher education
5510 represented on the faculty council.

5511 73. West Virginia Code §18B-6-4 is hereby amended as follows:

5512 **§18B-6-4. State advisory council of students.**

5513 (a) There is continued the state advisory council of students.

5514 (b) During the month of April of each year, each student government organization at
5515 each institution of higher education shall elect a student to serve on the student advisory
5516 council. Terms of the members of the student advisory council are for one year and
5517 begin on September 1, of each year. A duly elected member currently serving on the
5518 advisory council of students may continue to serve until a new member from that
5519 institution is elected pursuant to the provisions of this section. Members of the student
5520 advisory council are eligible to succeed themselves.

5521 (c) The student advisory council shall meet at least once each quarter. One of the
5522 quarterly meetings shall be during the month of September, at which meeting the
5523 student advisory council shall elect a chairperson. A member may not vote by proxy at
5524 the election. In the event of a tie in the last vote taken for the election, a member
5525 authorized by the student advisory council shall select the chairperson by lot from the
5526 names of those persons tied. Immediately following the election of a chairperson, the
5527 student advisory council shall elect, in the manner prescribed by this section for the
5528 election of a chairperson, a member of the council to preside over meetings in the
5529 absence of the chairperson. If the chairperson vacates the position, the student advisory
5530 council shall meet and elect a new chairperson to fill the unexpired term within thirty
5531 days following the vacancy.

5532 (d) The student advisory council, through its chairperson and in any appropriate manner,
5533 shall communicate to the ~~commission~~ OPE or the council, as appropriate, matters of

5534 higher education in which the student members have an interest.

5535 (e) At the request of the chairperson of the student advisory council, the ~~commission~~
5536 OPE and council each shall meet annually, between the months of October and
5537 December, with the student advisory council to discuss matters of higher education in
5538 which the student members or the ~~commission~~ OPE or council have an interest.

5539 (f) Members of the student advisory council serve without compensation, but are entitled
5540 to reimbursement for actual and necessary expenses, including travel expenses,
5541 incurred in the performance of their official duties. Expenses are paid from funds
5542 allocated to the state institution of higher education in which the student is enrolled.

5543 (g) The student advisory council shall prepare minutes of its meetings. The minutes shall
5544 be available, upon request, to any student of a state institution of higher education
5545 represented on the council.

5546 74. West Virginia Code §18B-6-5 is hereby amended as follows:

5547 **§18B-6-5. State advisory councils of classified employees.**

5548 (a) There is hereby continued the state advisory council of classified employees.

5549 (b) Election of members and terms of office. --

5550 (1) During the month of April of each odd-numbered year, each president of a state
5551 institution of higher education, at the direction of the classified council and in accordance
5552 with procedures established by the classified council, shall convene a meeting or
5553 otherwise institute a balloting process to elect one classified employee from each
5554 institution of higher education to serve on the classified council.

5555 (2) Terms of the members are for two years and begin on July 1, of each odd-numbered

5556 year. Members are eligible to succeed themselves.

5557 (3) For the year two thousand four only, each president of an administratively linked
5558 community and technical college shall consult with the classified council during the
5559 month of July to establish procedures and convene a meeting or otherwise institute a
5560 balloting process to elect one classified employee from that institution to serve on the
5561 classified council. Members so elected take office upon election and serve until the next
5562 regularly scheduled election held pursuant to this section; thereafter, classified
5563 employees elected to represent administratively linked community and technical colleges
5564 serve a regular two-year term.

5565 (c) The classified council shall meet at least once each quarter and may meet at such
5566 other times as called by the chairperson or by a majority of its members. One of the
5567 quarterly meetings shall be during the month of July, at which meeting the classified
5568 council shall elect a chairperson from among its members. The chairperson may serve
5569 no more than two consecutive terms as chairperson. A member may not vote by proxy at
5570 the election. In the event of a tie in the last vote taken for the election, a member
5571 authorized by the classified council shall select the chairperson by lot from the names of
5572 those persons tied. Immediately following the election of a chairperson, the classified
5573 council shall elect, in the manner prescribed by this section for the election of a
5574 chairperson, a member of the classified council to preside over meetings in the absence
5575 of the chairperson. If the chairperson vacates the position, the classified council shall
5576 meet and elect a new chairperson to fill the unexpired term within thirty days following
5577 the vacancy.

5578 (d) The classified council, through its chairperson and in any appropriate manner, shall
5579 communicate to the ~~commission~~ OPE or the council, as appropriate, matters of higher

5580 education in which the classified employees have an interest.

5581 (e) The ~~commission~~ OPE and council each shall meet annually, between the months of
5582 October and December, with the classified council to discuss matters of higher
5583 education in which the classified employees or the ~~commission~~ OPE or council have an
5584 interest.

5585 (f) Members of the classified council serve without compensation, but are entitled to
5586 reimbursement for actual and necessary expenses, including travel expenses, incurred
5587 in the performance of their official duties. Expenses are paid from funds allocated to the
5588 state institution of higher education which the member serves.

5589 (g) The classified council shall prepare minutes of its meetings. The minutes shall be
5590 available, upon request, to any classified employee of a state institution of higher
5591 education represented on the classified council.

5592 75. West Virginia Code §18B-7-1 is hereby amended as follows:

5593 **§18B-7-1. Legislative intent and purpose.**

5594 (a) The intent of the Legislature in enacting this article and articles eight, nine and nine-a
5595 of this chapter is to establish basic human resources policies applicable to public higher
5596 education capable of, but not limited to, assisting the governing boards in meeting the
5597 following objectives:

5598 (1) Implementing contemporary programs and practices to reward and incentivize
5599 performance and enhance employee engagement;

5600 (2) Providing benefits to the citizens of the State of West Virginia by supporting the
5601 public policy agenda as articulated by state policymakers;

- 5602 (3) Assuring fiscal responsibility by making the best use of scarce resources;
- 5603 (4) Promoting fairness, accountability, credibility, and transparency in personnel decision
5604 making;
- 5605 (5) Providing for job requirements and performance standards for classified staff
5606 positions with annual job performance evaluations for classified staff, and provisions for
5607 job performance counseling when appropriate.
- 5608 (6) Reducing or, wherever possible, eliminating arbitrary and capricious decisions
5609 affecting employees of higher education organizations as defined in section two, article
5610 nine-a of this chapter;
- 5611 (7) Creating stable, self-regulating human resources policies capable of evolving to
5612 meet changing needs;
- 5613 (8) Providing for institutional flexibility with meaningful accountability;
- 5614 (9) Adhering to federal and state laws;
- 5615 (10) Adhering to duly promulgated and adopted rules; and
- 5616 (11) Enhancing the sharing of best practices throughout the state higher education
5617 system.
- 5618 (12) Providing current, reliable data to governing boards, the ~~commission~~ OPE, the
5619 council, the Governor and the Legislature to inform the decision-making process of these
5620 policymakers.
- 5621 (b) To accomplish these goals, the Legislature encourages organizations to pursue a
5622 human resources strategy which provides monetary and nonmonetary returns to

5623 employees in exchange for their time, talents and efforts to meet articulated goals,
5624 objectives and priorities of the state, the ~~commission~~ OPE and council, and the
5625 organization. The system should maximize the recruitment, motivation and retention of
5626 highly qualified employees, promote satisfaction and engagement of employees with
5627 their jobs, promote job performance and achieve desired results.

5628 (c) It is the intent of the Legislature to establish a human resources strategy that is fair,
5629 accountable, credible, and transparent. In recognition of the importance of these
5630 qualities, the human resources strategy outlined in this article, together with articles eight
5631 and nine-a of this chapter, is designated and may be cited as “ FACT for Higher
5632 Education”.

5633 (d) It is the intent of the Legislature to require each higher education organization to
5634 achieve full funding of the minimum salary levels for classified employees established in
5635 section six, article nine-a of this chapter.

5636 76. West Virginia Code §18B-7-5 is hereby amended as follows:

5637 **§18B-7-5. Supplemental and additional retirement plans for employees; payroll**
5638 **deductions; authority to match employee contributions; retroactive curative and**
5639 **technical corrective action.**

5640 (a) Any reference in this code to the "additional retirement plan" relating to state higher
5641 education employees, means the "higher education retirement plan" provided in this
5642 section. Any state higher education employee participating in a retirement plan upon the
5643 effective date of this section continues to participate in that plan and may not elect to
5644 participate in any other state retirement plan. Any retirement plan continues to be
5645 governed by the provisions of law applicable on the effective date of this section.

5646 (b) The ~~commission~~ OPE, on behalf of the council, governing boards and itself, shall
5647 contract for a retirement plan for their employees, to be known as the "Higher Education
5648 Retirement Plan". The ~~commission~~ OPE, council and governing boards shall make
5649 periodic deductions from the salary payments due employees in the amount they are
5650 required to contribute to the Higher Education Retirement Plan, which deductions shall
5651 be six percent.

5652 (c) The ~~commission~~ OPE, council and governing boards may contract for supplemental
5653 retirement plans for any or all of their employees to supplement the benefits employees
5654 otherwise receive. The ~~commission~~ OPE, council and governing boards may make
5655 additional periodic deductions from the salary payments due the employees in the
5656 amount they are required to contribute for the supplemental retirement plan.

5657 (d) An organization, by way of additional compensation to their employees, shall pay an
5658 amount, which, at a minimum, equals the contributions of the employees into the higher
5659 education retirement plan from funds appropriated to the ~~commission~~ OPE, council or
5660 governing board for personal services.

5661 (e) As part of an overall compensation plan, the ~~commission~~ OPE, council or a
5662 governing board, each at its sole discretion, may increase its contributions to any
5663 employee retirement plan to an amount that exceeds the contributions of employees.

5664 (f) Each participating employee has a full and immediate vested interest in the retirement
5665 and death benefits accrued from all the moneys paid into the Higher Education
5666 Retirement Plan or a supplemental retirement plan for his or her benefit. Upon proper
5667 requisition of a governing board, the ~~commission~~ OPE or council, the Auditor periodically
5668 shall issue a warrant, payable as specified in the requisition, for the total contributions so
5669 withheld from the salaries of all participating employees and for the matching funds of

5670 the ~~commission~~ OPE, council or governing board.

5671 (g) Any person whose employment commences on or after July 1, 1991, and who is
5672 eligible to participate in the Higher Education Retirement Plan, shall participate in that
5673 plan and is not eligible to participate in any other state retirement system: Provided, That
5674 the foregoing provision does not apply to a person designated as a 21st Century Learner
5675 Fellow pursuant to section eleven, article three, chapter eighteen-a of this code. The
5676 additional retirement plan contracted for by the governing boards prior to July 1, 1991,
5677 remains in effect unless changed by the ~~commission~~ OPE. Nothing in this section
5678 considers employees of the council or governing boards as employees of the
5679 ~~commission~~ OPE, nor is the ~~commission~~ OPE responsible or liable for retirement
5680 benefits contracted by, or on behalf of, the council or governing boards.

5681 77. West Virginia Code §18B-7-6 is hereby amended as follows:

5682 **§18B-7-6. Continuing education and professional development.**

5683 (a) Each higher education organization shall establish and operate an employee
5684 continuing education and development program under a joint rule or rules promulgated
5685 by the governing board. Funds allocated or made available for employee continuing
5686 education and development may be used to compensate and pay expenses for any
5687 employees pursuing additional academic study or training to equip themselves better for
5688 their duties.

5689 The rules shall encourage continuing education and staff development and shall require
5690 that employees be selected on a nonpartisan basis using fair and meaningful criteria
5691 which afford all employees opportunities to enhance their skills and productivity in the
5692 workforce of the organization. These rules also may include reasonable provisions for

5693 the continuation or return of any employee receiving the benefits of the education or
5694 training, or for reimbursement by the state for expenditures incurred on behalf of the
5695 employee.

5696 (b) Subject to legislative appropriation therefor, the ~~commission~~ OPE and council shall
5697 promote and facilitate additional, regular, training and professional development for
5698 employees engaged in human resources-related activities at all organizations. The
5699 training and professional development:

5700 (1) Shall be developed with emphasis on distance learning, in consideration to limiting
5701 travel demands on employees; and

5702 (2) Shall be in addition to and may not supplant the training and professional
5703 development regularly provided to any class of employees by each organization prior to
5704 the effective date of this section.

5705 78. West Virginia Code §18B-7-8 is hereby amended as follows:

5706 **§18B-7-8. Reporting.**

5707 (a) Personnel reports. —

5708 (1) Beginning December 1, 2020 and every five years thereafter, the ~~commission~~ OPE
5709 and council shall report to the Legislative Oversight Commission on Education
5710 Accountability addressing the following issues:

5711 (A) Progress made by organizations toward achieving fair compensation of all
5712 employees; and

5713 (B) Detailed data disaggregated by organization and employee category or classification,
5714 comparing funding for salaries of faculty, classified employees and nonclassified

5715 employees as a percentage of the average funding for each of these classes or
5716 categories of employees among the organization's state, region or national markets, as
5717 appropriate, and among similar organizations within the state systems of public higher
5718 education.

5719 (2) The ~~commission~~ OPE and council shall prepare a human resources report card
5720 summarizing the performance of organizations on key human resources measures
5721 established by the ~~commission~~ OPE and council. The report card shall be presented to
5722 the Legislative Oversight Commission on Education Accountability every five years,
5723 beginning December 1, 2020, and shall be made available to the general public. At a
5724 minimum, the human resources report card shall contain the following data:

5725 (A) Human resources department metrics by organization:

5726 (i) Areas of human resources functions outsourced to external entities;

5727 (ii) Total expenses per full-time equivalent employee; and

5728 (iii) Tuition revenue per full-time equivalent employee.

5729 (B) Human resources expense data:

5730 (i) Ratio of human resources expenses to operating expenses; and

5731 (ii) Total human resources expense per organization employee.

5732 (C) Compensation data:

5733 (i) Average amount of annual salary increase per full-time equivalent organization
5734 employee;

5735 (ii) Total amount of organization employee salaries as a percent of operating expenses;

5736 and

5737 (iii) Total amount of organization employee benefit costs as a percent of cash
5738 compensation.

5739 (D) System metrics:

5740 (i) Comparisons of faculty salaries at each organization to market averages; and

5741 (ii) Comparisons of classified and nonclassified employee salaries at each organization
5742 to current market averages.

5743 (b) Job classification system report. —

5744 By July 1, 2016, and at least once within each five-year period thereafter, the
5745 ~~commission~~ OPE and council jointly shall review the effectiveness of the system for
5746 classifying jobs and submit an in-depth report to the Legislative Oversight Commission
5747 on Education Accountability. The report shall include, but is not limited to, findings,
5748 recommendations and supporting documentation regarding the following job
5749 classification issues:

5750 (1) The effectiveness of the point factor methodology and a determination of whether it
5751 should be maintained; and

5752 (2) The status of the job evaluation plan, including the factors used to classify jobs or
5753 their relative values, and a determination of whether the plan should be adjusted.

5754 (c) It is the responsibility of the head of human resources for each organization to
5755 prepare and submit to the president or chief executive officer all human resources data
5756 requested by the ~~commission~~ OPE and council. The president or executive officer of
5757 each organization shall submit the requested data at times established by the

5758 ~~commission~~ OPE and council.

5759 (d) In meeting reporting requirements established by this article and articles eight, nine
5760 and nine-a of this chapter:

5761 (1) The ~~commission~~ OPE and council shall use the most recent data available and, as
5762 appropriate, shall benchmark it against best practices and appropriate labor markets;
5763 and

5764 (2) With the exception of the human resources report card and any other report
5765 designated as due no later than a date certain, the ~~commission~~ OPE and council may
5766 combine two or more personnel reports if the dates on which they are due to the
5767 Legislature fall within a sixty-day period.

5768 79. West Virginia Code §18B-7-14 is hereby amended as follows:

5769 **§18B-7-14. Higher education employees' catastrophic leave bank and leave**
5770 **transfer.**

5771 (a) For the purposes of this section, "employee" means either of the following:

5772 (1) A classified or nonclassified employee who is employed by a higher education
5773 governing board, by the ~~commission~~ OPE or by the council; or

5774 (2) A faculty member, as defined in section one, article eight of this chapter, who is
5775 eligible to accrue sick leave.

5776 (b) An employee may donate sick and annual leave to a leave bank established and
5777 operated in accordance with subsection (d) of this section or directly to another
5778 employee in accordance with subsection (e) of this section. No employee may be
5779 compelled to donate sick or annual leave. Any leave donated by an employee pursuant

5780 to this section shall be used only for the purpose of catastrophic illness or injury as
5781 defined in subsection (c) of this section and shall reduce, to the extent of such donation,
5782 the number of days of annual or sick leave to which the employee is entitled.

5783 (c) For the purpose of this section, a catastrophic illness or injury is one that is expected
5784 to incapacitate the employee and create a financial hardship because the employee has
5785 exhausted all sick and annual leave and other paid time off. Catastrophic illness or injury
5786 also includes an incapacitated immediate family member as defined by a governing
5787 board, the ~~commission~~ OPE commission or the council, as appropriate, if this results in
5788 the employee being required to take time off from work for an extended period of time to
5789 care for the family member and if the employee has exhausted all sick and annual leave
5790 and other paid time off.

5791 (d) A leave bank or banks may be established at each state institution of higher
5792 education, the ~~commission~~ OPE or the council to which employees may donate either
5793 sick or annual leave. The bank or banks may be established jointly by the policy
5794 ~~commission~~ OPE and the governing boards or may be established for the ~~commission~~
5795 OPE, the council, and each of the governing boards. Sick or annual leave may be
5796 deposited in the leave bank, and shall be reflected as a day-for-day deduction from the
5797 sick or annual leave balance of the depositing employee.

5798 Donated leave may be withdrawn by any employee experiencing a catastrophic illness
5799 or injury when the following conditions are met:

5800 (1) The president of the institution, the director of OPE, or the chancellor of ~~the~~
5801 ~~commission~~ or the council, as appropriate, verifies that the employee is unable to work
5802 due to the catastrophic illness or injury; and

5803 (2) The president of the institution, the director of OPE, or a the chancellor of the council,
5804 as appropriate, approves the withdrawal and provides written notice to the personnel
5805 office.

5806 The withdrawal shall be reflected as a day-for-day addition to the leave balance of the
5807 withdrawing employee.

5808 (e) Sick or annual leave may be donated to an employee experiencing a catastrophic
5809 illness or injury. The leave shall be donated at the request of the employee after
5810 appropriate verification that the employee is unable to work due to the catastrophic
5811 illness or injury as determined by the president of the institution or the appropriate
5812 chancellor. When transfer of sick or annual leave is approved by the president of the
5813 institution or the appropriate chancellor, any employee may donate sick or annual leave
5814 in one-day increments by providing written notice to the personnel office. Donations shall
5815 be reflected as a day-for-day deduction from the sick or annual leave balance of the
5816 donating employee. An employee receiving the donated sick or annual leave shall have
5817 any time which is donated credited to his or her account in one-day increments and
5818 reflected as a day-for-day addition to the leave balance of the receiving employee.

5819 (f) Use of donated credits may not exceed a maximum of twelve continuous calendar
5820 months for any one catastrophic illness or injury.

5821 (1) The total amount of sick or annual leave withdrawn or received may not exceed an
5822 amount sufficient to ensure the continuance of regular compensation and may not be
5823 used to extend insurance coverage pursuant to section thirteen, article sixteen, chapter
5824 five of this code.

5825 (2) An employee withdrawing or receiving donations of sick or annual leave pursuant to

5826 this section shall use any leave personally accrued on a monthly basis prior to receiving
5827 additional donated sick or annual leave.

5828 (g) Donated sick or annual leave deposited in an institutional leave bank or transferred
5829 under subsection (d) of this section may be inter-institutional in accordance with the
5830 policies of the appropriate governing board. Each institution, the ~~commission~~ OPE or the
5831 council is responsible for the administration of the sick or annual leave deposits,
5832 withdrawals and transfers of its employees. Rules implementing the provisions of this
5833 section may be adopted jointly or separately by the governing boards, the ~~commission~~
5834 OPE or the council in accordance with section six, article one of this chapter and, in the
5835 case of the ~~commission~~ OPE and council, in accordance with article three-a, chapter
5836 twenty-nine-a of this code.

5837 80. West Virginia Code §18B-7-15 is hereby amended as follows:

5838 **§18B-7-15. Merit increases.**

5839 Higher education organizations may grant merit increases which are in accordance with
5840 this article and articles eight, nine and nine-a of this chapter and with duly promulgated
5841 rules of the ~~commission~~ OPE and council.

5842 81. West Virginia Code §18B-7-16 is hereby amended as follows:

5843 **§18B-7-16. Study of employment practices.**

5844 (a) The ~~commission~~ OPE and council shall study the following issues relating to
5845 employment practices:

5846 (1) Developing a fair and rational policy based upon best human resources practices for
5847 covering reductions in force, furloughs and other issues relating to seniority, including

5848 determining how employees shall be treated whose salaries are derived from funds
5849 other than state appropriations;

5850 (2) Determining the advantages and disadvantages of maintaining the internal
5851 preferences for hiring, promoting and transferring classified employees;

5852 (3) Determining the appropriate definition of a "nonclassified" position, recommending a
5853 best practice criteria for designating positions as nonclassified and recommending the
5854 appropriate number or ratio of nonclassified positions for ~~commission~~ OPE and council
5855 organizations.

5856 (4) Recommending a rational, uniform policy to determine the status of employees
5857 whose positions are funded, in whole or in part, by an external grant or contract from a
5858 federal, state or local government or a private entity.

5859 (b) The ~~commission~~ OPE and council shall complete the work and report their findings,
5860 conclusions and recommendations, together with drafts of any legislation necessary to
5861 effectuate the recommendations, to the Legislative Oversight Commission on Education
5862 Accountability upon completion, but no later than January 1, 2018.

5863 82. West Virginia Code §18B-8-5 is hereby amended as follows:

5864 **§18B-8-5. Notice to probationary faculty members of retention or nonretention;**
5865 **hearing.**

5866 (a) For the purposes of this section, "Probationary faculty member" means the definition
5867 adopted in a joint rule promulgated by the Higher Education Policy Commission
5868 ~~commission~~ and council. The rights provided to probationary faculty members by this
5869 section are in addition to, and not in lieu of, other rights afforded to them by other rules
5870 and other provisions of law.

5871 (b) The president of each state institution of higher education shall give written notice
5872 concerning retention or nonretention for the ensuing academic year to a probationary
5873 faculty member not later than March 1.

5874 (c) If a probationary faculty member who is not retained so requests, the president or his
5875 or her designee shall inform the probationary faculty member by certified mail within ten
5876 days of the reasons for nonretention. A probationary faculty member who desires to
5877 appeal the decision may proceed to level three of the grievance procedure established in
5878 article two, chapter six-c of this code. If the administrative law judge decides that the
5879 reasons for nonretention are arbitrary, capricious or without a factual basis, the faculty
5880 member shall be retained for the ensuing academic year.

5881 83. West Virginia Code §18B-8-7 is hereby amended as follows:

5882 **§18B-8-7. Authority of Governing Boards relating to faculty.**

5883 Consistent with this article, and after consulting with and providing 30 days written notice
5884 to the faculty senate, a governing board may adopt a rule relating to the faculty. The
5885 provisions of any rule adopted by a governing board preempt any conflicting rule
5886 adopted by the ~~commission~~ OPE or the council.

5887 84. West Virginia Code §18B-9A-2 is hereby amended as follows:

5888 **§18B-9A-2. Definitions.**

5889 As used in this article and articles seven, eight and nine of this chapter, the following
5890 words have the meanings ascribed to them unless the context clearly indicates a
5891 different meaning:

5892 (1) "Classification system" means the process by which jobs, job titles, career ladders

5893 and assignment to pay grades are determined.

5894 (2) "Classified employee" or "employee" means a regular full-time or regular part-time
5895 employee of an organization who: (i) does not meet the duties test for exempt status
5896 under the provisions of the Fair Labor Standards Act; and (ii) is not otherwise a
5897 nonclassified employee designated pursuant to subdivision (11) of this
5898 section: Provided, That any employee of an organization who was a classified employee
5899 as of January 1, 2017, retains that status unless otherwise deemed a nonclassified
5900 employee pursuant to the provisions of subparts (A) through (D) of subdivision (11) of
5901 this section.

5902 (3) "Job" means the total collection of tasks, duties and responsibilities assigned to one
5903 or more individuals whose work is of the same nature and level.

5904 (4) "Job description" or "position description" means a summary of the most important
5905 features of a job, including the general nature and level of the work performed.

5906 (5) "Job evaluation" means a systematic way of determining the value/worth of a job in
5907 relation to other jobs in an organization by analyzing weighted compensable factors
5908 resulting in the assignment of a job title and pay grade to a position described by a
5909 position information questionnaire.

5910 (6) "Job family" means a group of jobs having the same nature of work, but requiring
5911 different levels of skill, effort, responsibility or working conditions.

5912 (7) "Job specification" means the generic description of a group of jobs assigned a
5913 common job title in the classification system. The job specification contains a brief
5914 summary of the purpose of the job; the most common duties and responsibilities
5915 performed by positions holding the title; knowledge, skills and abilities necessary to

- 5916 perform the work; and minimum qualifications required for positions assigned the title.
- 5917 (8) "Job title" means the descriptive name for the total collection of tasks, duties and
5918 responsibilities assigned to one or more individuals whose positions have the same
5919 nature of work performed at the same level.
- 5920 (9) "Job worth hierarchy" means the perceived internal value of jobs in relation to each
5921 other within an organization.
- 5922 (10) "Midpoint differential" means the difference in wage rates paid in the midpoints of
5923 two adjacent pay grades. A midpoint differential is calculated by taking the difference
5924 between the two adjacent midpoints as a percentage of the lower of the midpoints.
- 5925 (11) "Nonclassified employee" means, an employee of an organization who meets one
5926 or more of the following criteria:
- 5927 (A) Holds a direct policy-making position at the department or organization level;
- 5928 (B) Reports directly to the president or chief executive officer of the organization;
- 5929 (C) Is in a position considered by the president or designee to be critical to the institution
5930 pursuant to policies or decisions adopted by the governing board;
- 5931 (D) Is in an information technology-related position;
- 5932 (E) Is hired after July 1, 2017, and meets the duties test for exempt status under the
5933 provisions of the Fair Labor Standards Act at the time of hire or anytime thereafter; or
- 5934 (F) Was in a nonclassified position as of January 1, 2017.
- 5935 Unless otherwise established by action of the institution where employed, a
5936 nonclassified employee serves at the will and pleasure of the organization, which

5937 authority may be delegated by act of the board.

5938 (12) "Organization" means the ~~commission~~ OPE, the council, an agency or entity under
5939 the respective jurisdiction of the ~~commission~~ OPE or the council or a state institution of
5940 higher education as defined in section two, article one of this chapter.

5941 (13) "Pay grade" means the level to which a job is assigned within a job worth hierarchy
5942 as a result of job evaluation.

5943 (14) "Point factor methodology" means a quantitative job evaluation process in which
5944 elements of a job are given a factor value and each factor is weighted according to its
5945 importance.

5946 (15) "Position information questionnaire" or "PIQ" means a tool used to gather specific
5947 job information for a specific position held by an individual, and used for the purposes of
5948 evaluating the position for determination of job title and pay grade. The PIQ is used to
5949 gather information used to assess the compensable factors of knowledge, experience,
5950 complexity and problem solving, freedom of action, scope and effect, breadth of
5951 responsibility, intra-systems contacts, external contacts, direct supervision of personnel,
5952 indirect supervision of personnel and health, safety and physical considerations.

5953 (16) "Pay range spread" means the difference in the minimum and maximum rate of pay
5954 for a pay grade expressed as a percentage.

5955 85. West Virginia Code §18B-9A-4 is hereby amended as follows:

5956 **§18B-9A-4. Job classification system; job classification committee established;**
5957 **membership; meetings; powers and duties.**

5958 (a) The ~~commission~~ OPE and council jointly shall maintain a uniform system for

5959 classifying jobs and positions of organization classified employees.

5960 (b) Pursuant to the rule authorized in section seven of this article, the ~~commission~~ OPE
5961 and council jointly shall establish and maintain a job classification committee.

5962 The rule shall contain the following provisions related to the job classification committee:

5963 (1) A systematic method for appointing committee members who are representative of
5964 all the higher education organizations and affected constituent groups, including
5965 specifically providing for membership selections to be made from nominations from
5966 these higher education organizations and affected constituent groups;

5967 (2) A requirement that an organization may have no more than two members serving on
5968 the committee at any time and the combined membership representing various groups
5969 or divisions within or affiliated with an organization in total may not constitute a majority
5970 of the membership; and

5971 (3) A requirement that committee members serve staggered terms. One third of the
5972 initial appointments shall be for two years, one third for three years and one third for four
5973 years. Thereafter, the term is four years. A member may not serve more than four years
5974 consecutively.

5975 (c) Powers and duties of the committee include, but are not limited to, the following:

5976 (1) Modifying and deleting jobs and assigning job titles;

5977 (2) Reviewing and revising job titles to make them consistent among organizations,
5978 including adopting consistent title abbreviations;

5979 (3) Establishing job worth hierarchies and data lines for each job title;

5980 (4) Classifying jobs, establishing proper pay grades and placing jobs in pay grades
5981 consistent with the job evaluation plan;

5982 (5) Determining when new job titles are needed and creating new job titles within the
5983 system;

5984 (6) Recommending base pay enhancements for jobs for which the application of point
5985 factor methodology produces significantly lower salaries than external market pricing.
5986 The committee may exercise this authority only if it reevaluates each job annually to
5987 make a determination whether the enhancement should be continued;

5988 (7) Recommending a procedure for performing job family reviews;

5989 (8) Determining appropriate career ladders within the classification system and
5990 establishing criteria for career progression; and

5991 (9) Hearing job classification appeals prior to commencement of the formal grievance
5992 process pursuant to ~~commission~~ OPE and council rule.

5993 (d) The committee shall meet monthly if there is business to conduct and also may meet
5994 more frequently at the call of the chair. A majority of the voting members serving on the
5995 committee at a given time constitutes a quorum for the purpose of conducting business.

5996 (e) The ~~commission~~ OPE and council shall use an appropriate methodology to classify
5997 jobs. The ~~commission~~ OPE and council jointly may adjust the job evaluation plan,
5998 including the factors used to classify jobs and their relative values, at any time.

5999 (f) ~~No later than July 1, 2012, the commission and council shall have in place an up-to-~~
6000 ~~date job description for every classified job.~~

6001 (g) The ~~commission~~ OPE and council shall develop a position information questionnaire

6002 to be used by all organizations to gather data necessary for classification of positions
6003 within the job worth hierarchy.

6004 86. West Virginia Code §18B-9A-5 is hereby amended as follows:

6005 **§18B-9A-5. Compensation planning and review committee established;**
6006 **membership; meetings; powers and duties.**

6007 (a) Pursuant to the rule authorized in section seven of this article, the ~~commission~~ OPE
6008 and council jointly shall establish and maintain a compensation planning and review
6009 committee.

6010 (b) Within the guidelines established in this article and articles seven, eight and nine of
6011 this chapter, the committee shall manage all aspects of compensation planning and
6012 review that the ~~commission~~ OPE and council jointly delegate to it.

6013 The rule shall contain the following requirements related to the compensation planning
6014 and review committee:

6015 (1) A systematic method for appointing committee members who are representative of
6016 all the higher education organizations and affected constituent groups, including
6017 specifically providing for membership selections to be made from nominations from
6018 these higher education organizations and affected constituent groups; and

6019 (2) A requirement that an organization may have no more than two members serving on
6020 the committee at any time and the combined membership representing various groups
6021 or divisions within or affiliated with an organization in total may not constitute a majority
6022 of the membership; and

6023 (3) A requirement that committee members serve staggered terms. One third of the

6024 initial appointments shall be for two years, one third for three years and one third for four
6025 years. Thereafter, the term is four years. A member may not serve more than four years
6026 consecutively.

6027 (c) The committee shall meet at least quarterly and at other times at the call of the chair.
6028 A majority of the voting members serving on the committee at a given time constitutes a
6029 quorum for the purpose of conducting business.

6030 (d) An institution may not have a majority of the committee members, and the combined
6031 membership representing various groups or divisions within or affiliated with an
6032 organization in total may not constitute a majority of the membership.

6033 (e) The Compensation Planning and Review Committee has powers and duties related
6034 to classified employee compensation programs which include, but are not limited to, the
6035 following:

6036 (1) Making annual recommendations for revisions in the system classified compensation
6037 plan, based on existing economic, budgetary and fiscal conditions or on market study
6038 data.

6039 (2) Overseeing the annual internal market review;

6040 (3) Meeting at least annually with the Job Classification Committee to discuss
6041 benchmark jobs to be included in salary surveys, market “hot jobs” that may require a
6042 temporary salary adjustment, results of job family reviews and assessment of current job
6043 titles within the classification system for market matches and other issues as the,
6044 Chancellor or chancellor’s designee, in consultation with the chancellors, determines to
6045 be appropriate; and

6046 (4) Performing other duties as assigned by the ~~commission~~ OPE and council or as

6047 necessary or expedient to maintain an effective classification and compensation system.

6048 (f) The ~~commission~~ OPE and council may allow the committee to collapse the three
6049 lowest pay grades into a single pay grade and provide for employees to be paid at rates
6050 appropriate to the highest of the three lowest pay grades.

6051 87. West Virginia Code §18B-9A-5a is hereby amended as follows:

6052 **§18B-9A-5a. Restriction on duties of job classification committee and**
6053 **compensation planning and review committee.**

6054 The ~~commission~~ OPE and council may not delegate any of the following duties to the
6055 Compensation Planning and Review Committee or the Job Classification Committee:

6056 (1) Approval of a classification and compensation rule;

6057 (2) Approval of the job evaluation plan; and

6058 (3) Approval of the annual classified salary schedule.

6059 88. West Virginia Code §18B-9A-6 is hereby amended as follows:

6060 **§18B-9A-6. Salary structure and salary schedules.**

6061 (a) The ~~commission~~ OPE and council shall develop and maintain a classified salary
6062 schedule and ensure that all organizations under their respective jurisdictions adhere to
6063 state and federal laws and duly promulgated and adopted organization rules.

6064 (b) The classified salary schedule serves as the basis for the following activities:

6065 (1) Evaluating compensation of classified employees in relation to appropriate external
6066 markets; and

6067 (2) Developing the minimum salary per pay grade to be adopted by the ~~commission~~ OPE
6068 and council.

6069 (c) The classified salary schedule shall meet the following criteria:

6070 (1) Sets forth the number of pay grades to be included in the structure;

6071 (2) Includes a midpoint value for each pay grade which represents the average market
6072 rate of pay for jobs in that pay grade. The ~~commission~~ OPE and council may choose a
6073 midpoint value that is not based exclusively on market salary data; and

6074 (3) Includes minimum and maximum pay range values based on an established range
6075 spread.

6076 (d) The ~~commission~~ OPE and council jointly shall use workforce compensation data
6077 provided by Workforce West Virginia and other compensation data as is readily available
6078 from national recognized sources, including compensation data of CUPA-HR, to
6079 establish the appropriate external market conditions of classified positions. The
6080 ~~commission~~ OPE and council, in consultation with the Compensation Planning and
6081 Review Committee, may take any combination of the following actions:

6082 (1) Adjust the number of pay grades and the point values necessary to validate the result
6083 of the classification system and the job worth hierarchy with the market;

6084 (2) Adjust the midpoint differentials between pay grades better to reflect market
6085 conditions; or

6086 (3) Adjust the range spread for any pay grade.

6087 (e) The ~~commission~~ OPE and council jointly may perform an annual review of market
6088 salary data to determine how salaries have changed in the external market. Based on

6089 data collected, the ~~commission~~ OPE and council jointly, in consultation with the
6090 Compensation Planning and Review Committee, shall adjust the classified salary
6091 schedule if changes are supported by the data.

6092 (f) Annually, the ~~commission~~ OPE and council may approve a minimum salary amount
6093 that sets forth a compensation level for each pay grade below which no organization
6094 employee may be paid, subject to available funds.

6095 (1) The minimum salary amount for each pay grade on the classified salary schedule is
6096 determined by applying a percentage determined after analysis of the market and
6097 existing compensation levels to the annual market salary data. The ~~commission~~ OPE
6098 and council may take into consideration other factors they consider appropriate.

6099 (2) The salary of an employee working fewer than thirty-seven and one-half hours per
6100 week shall be prorated.

6101 (g) The organization rule promulgated pursuant to subsection (c), section seven of this
6102 article may provide for differential pay for certain employees who work different shifts,
6103 weekends or holidays.

6104 89. West Virginia Code §18B-9A-7 is hereby amended as follows:

6105 **§18B-9A-7. Classification and compensation rules required.**

6106 (a) Notwithstanding any provision of law or rule to the contrary, the ~~commission~~ OPE
6107 and council jointly shall design, develop, implement and administer the classified
6108 personnel system of classification and compensation pursuant to this article and articles
6109 seven, eight and nine of this chapter.

6110 (b) System rule. —

6111 The ~~commission~~ OPE and council shall propose a joint rule or rules for legislative
6112 approval in accordance with article three-a, chapter twenty-nine-a of this code to
6113 implement the provisions of this article and articles seven, eight and nine of this chapter.
6114 The rule shall establish a classified employee classification and compensation system
6115 that incorporates best human resources practices.

6116 (1) Organization accountability. —

6117 The ~~commission~~ OPE and council shall propose a joint system rule that provides a
6118 procedure for correcting deficiencies identified in the human resources reviews
6119 conducted pursuant to section nine, article seven of this chapter. The procedure shall
6120 include, but is not limited to, the following components:

6121 (A) Specifying a reasonable time for organizations to correct deficiencies uncovered by a
6122 review;

6123 (B) Applying sanctions when major deficiencies are not corrected within the allotted time:

6124 (i) For purposes of this subsection, a major deficiency means an organization has failed
6125 to comply with applicable personnel rules of the ~~commission~~ OPE and council.

6126 (ii) When a major deficiency is identified, the ~~commission~~ OPE or council, as
6127 appropriate, shall notify the governing board of the institution in writing, giving particulars
6128 of the deficiency and outlining steps the governing board is required to take to correct
6129 the deficiency.

6130 (iii) The governing board shall correct the major deficiency within four months or longer
6131 provided the length of time is agreed upon by the governing board and the ~~commission~~
6132 OPE or council as applicable, and shall notify the ~~commission~~ OPE or council, as
6133 appropriate, when the deficiency has been corrected.

6134 (iv) If the governing boards fail to correct the major deficiency or fail to notify the
6135 ~~commission~~ OPE or council, as appropriate, that the deficiency has been corrected
6136 within the agreed upon period, the ~~commission~~ OPE or council may apply sanctions.

6137 Sanctions may include, but are not limited to, prohibiting compensation increases for key
6138 administrators who have authority over the areas of major deficiency until the identified
6139 deficiencies are corrected.

6140 (2) Classified employee classification and compensation. — The classified employee
6141 classification and compensation system rule shall establish a classification and
6142 compensation system to accomplish the following objectives:

6143 (A) Allowing for performance and other objective, measurable factors such as technical
6144 expertise, education, years of experience in higher education and experience above
6145 position requirements to be considered in compensation decisions;

6146 (B) Achieving and maintaining appropriate levels of employee dispersion through a pay
6147 range;

6148 (C) The rule shall provide that the salary of a current employee may not be reduced by a
6149 job reclassification, a modification of the market salary schedule or other conditions that
6150 the ~~commission~~ OPE and the council consider appropriate and reasonable;

6151 (D) Establishing a job worth hierarchy and identifying the factors to be used to classify
6152 jobs and their relative values and determining the number of points that are necessary to
6153 assign a job to a particular pay grade;

6154 (E) Establishing an objective standard to be used in determining when a job description
6155 or a position description is up-to-date;

6156 (F) Providing a procedure whereby a classified employee or a supervisor who believes
6157 that changes in the job duties and responsibilities of the employee justify a position
6158 review may request that a review be done at any time;

6159 (G) Specifying that the acceptable period that may elapse between the time when an
6160 employee files a formal request for a position review and the time when the review is
6161 completed may not exceed forty-five days. An organization that fails to complete a
6162 review within the specified time shall provide the employee back pay from the date the
6163 request for review was received if the review, when completed, produces a
6164 reclassification of the position into a job in a higher pay grade;

6165 (H) Providing a procedure by which employees may file appeals of job classification
6166 decisions for review by the Job Classification Committee prior to filing a formal
6167 grievance. The committee shall render a decision within sixty days of the date the appeal
6168 is filed with the ~~commission~~ OPE or the council;

6169 (I) Providing for recommendations from the Compensation Planning and Review
6170 Committee and the Job Classification Committee to be considered by the ~~commission~~
6171 OPE and the council and to be included in the legislative reporting process pursuant to
6172 section eight, article seven of this chapter; and

6173 (J) Establishing and maintaining the job classification committee mandated in section
6174 four of this article.

6175 (3) Performance evaluations. — The system rule shall provide for developing and
6176 implementing a consistent, objective performance evaluation model and shall mandate
6177 that training in conducting performance evaluations be provided for all organization
6178 personnel who hold supervisory positions.

6179 (c) Organization rules. —

6180 (1) Each organization shall promulgate and adopt a rule or rules in accordance with the
6181 provisions of section six, article one of this chapter to implement requirements contained
6182 in the classification and compensation system rule or rules of the ~~commission~~ OPE and
6183 council. The ~~commission~~ OPE and council shall provide a model personnel rule for the
6184 organizations under their jurisdiction and shall provide technical assistance in
6185 rulemaking as requested.

6186 (2) The initial organization rule shall be adopted not later than six months following the
6187 date on which the ~~commission~~ OPE and council receive approval to implement the
6188 emergency rule promulgated pursuant to this section. Additionally, each organization
6189 shall amend its rule to comply with mandated changes not later than six months after the
6190 effective date of any change in statute or rules, unless a different compliance date is
6191 specified within the statute or rule containing the requirements or mandate.

6192 (3) An organization may not adopt a rule under this section until it has consulted with the
6193 appropriate employee class affected by the rule's provisions.

6194 (4) If an organization fails to adopt a rule or rules as mandated by this subsection, the
6195 ~~commission~~ OPE and council may prohibit it from exercising any flexibility or
6196 implementing any discretionary provision relating to human resources contained in
6197 statute or in a ~~commission~~ OPE or council rule until the organization's rule requirements
6198 have been met.

6199 (5) Additional flexibility or areas of operational discretion identified in the system rule or
6200 rules may be exercised only by an organization which meets the following requirements:

6201 (A) Receives certification from the ~~commission~~ OPE or council, as appropriate, that the

6202 organization has achieved full funding of the temporary salary schedule or is making
6203 appropriate progress toward achieving full funding pursuant to section three, article nine
6204 of this chapter;

6205 (B) Promulgates a comprehensive classification and compensation rule as required by
6206 this section;

6207 (C) Receives approval for the classification and compensation rule from the appropriate
6208 chancellor in accordance with this section; and

6209 (D) Adopts the rule by vote of the organization's governing board.

6210 90. West Virginia Code §18B-9B-1 is hereby amended as follows:

6211 **§18B-9B-1. Flexibility to adopt personnel rules; emergency rule authorized.**

6212 (a) West Virginia University; Marshall University; West Virginia School of Osteopathic
6213 Medicine; or any other organization that provides notice to the ~~commission~~ OPE or
6214 council, as appropriate; may, after consultation with staff council of the applicable
6215 organization, file a rule or rules to implement articles seven and eight of this chapter, and
6216 upon the adoption any rules promulgated by the ~~commission~~ OPE or council under
6217 articles seven and eight of this chapter are inapplicable to the organization.

6218 (b) West Virginia University; Marshall University; West Virginia School of Osteopathic
6219 Medicine; or any other organization that provides notice to the ~~commission~~ OPE or
6220 council, as appropriate, may establish a classification and compensation rule, after
6221 consultation with and providing 30 days written notice to the staff council of the
6222 applicable organization, that incorporates best human resources practices and
6223 addresses the areas of organization accountability, employee classification and
6224 compensation, performance evaluation, reductions in force, and development of

6225 organization policies, and upon the adoption the provisions of article nine-a of this
6226 chapter and any rule promulgated by the ~~commission~~ OPE or the council thereto, is
6227 inapplicable to the extent it conflicts with the rule promulgated by the
6228 organization: Provided, That any rule adopted by an organization shall use the
6229 definitions of classified and nonclassified employees established in section two of article
6230 nine-a of this chapter.

6231 (c) Any rule adopted by an organization pursuant to subsection (b) of this section shall
6232 address the following:

6233 (1) Employee classification and compensation. — The rule proposed pursuant to this
6234 policy shall establish a classification and compensation system to accomplish the
6235 following objectives, including best practices consistent with those objectives:

6236 (A) Providing opportunities for employee advancement based on performance and other
6237 objective, measurable factors including education, years of experience, technical
6238 expertise, and experience above position requirements;

6239 (B) Identifying the factors to be used to classify jobs and their relative values or
6240 comparable best practice and determining the requirements that are necessary to assign
6241 a job to a particular salary level; and

6242 (C) Establishing an objective standard to be used in determining when a job description
6243 or a position description is up-to-date.

6244 (2) Performance evaluations. — The rule shall provide for developing and implementing
6245 a consistent, objective performance evaluation model and shall mandate that training in
6246 conducting performance evaluations be provided for all organization personnel who hold
6247 supervisory positions.

6248 (3) Management shall meet at least quarterly with representatives of staff council to
6249 discuss the implementation and effectiveness of any rule adopted by an organization
6250 pursuant to articles seven, eight, nine-a and nine-b of this chapter and may make
6251 recommendations to the president or board of Governors of an organization to address
6252 any concerns or issues identified by staff council;

6253 (4) The rule may provide for differential pay for certain employees who work different
6254 shifts, weekends or holidays and for differential treatment for employees; and

6255 (5) The rule shall provide for an external review of human resource practices at the
6256 organization at least once every five years, relating to compliance with the applicable
6257 provisions of article seven, eight, nine-a and nine-b of this chapter, including provisions
6258 that the staff council have an opportunity to speak with the external Auditors before the
6259 start of the audit and after its completion.

6260 91. West Virginia Code §18B-10-1 is hereby amended as follows:

6261 **§18B-10-1. Enrollment, tuition and other fees at education institutions; refund of**
6262 **fees.**

6263 (a) Each governing board shall fix tuition and other fees for each academic term for the
6264 different classes or categories of students enrolling at the state institution of higher
6265 education under its jurisdiction, including the fixing of different tuition and fees for online
6266 course delivery, and may include among the tuition and fees any one or more of the
6267 following as defined in section one-b of this article:

6268 (1) Tuition and required educational and general fees;

6269 (2) Auxiliary and auxiliary capital fees; and

- 6270 (3) Required educational and general capital fees.
- 6271 (b) A governing board may establish a single special revenue account for each or all of
6272 the following classifications of fees:
- 6273 (1) All tuition and required educational and general fees collected;
- 6274 (2) All auxiliary and auxiliary capital fees collected; and
- 6275 (3) All required educational and general capital fees collected to support existing
6276 systemwide and institutional debt service and future systemwide and institutional debt
6277 service, capital projects and campus renewal for educational and general facilities.
- 6278 (4) Subject to any covenants or restrictions imposed with respect to revenue bonds
6279 payable from the accounts, a governing board may expend funds from each special
6280 revenue account for any purpose for which funds were collected within that account
6281 regardless of the original purpose for which the funds were collected.
- 6282 (5) If a governing board of an Exempted School establishes a single special revenue
6283 account for all the foregoing classifications of fees in this subsection, the governing
6284 board must account for each classification of fee separately in their internal accounting
6285 system.
- 6286 (c) The purposes for which tuition and fees may be expended include, but are not limited
6287 to, health services, student activities, recreational, athletic and extracurricular activities.
6288 Additionally, tuition and fees may be used to finance a student's attorney to perform
6289 legal services for students in civil matters at the institutions. The legal services are
6290 limited to those types of cases, programs or services approved by the president of the
6291 institution where the legal services are to be performed.

6292 ~~(d) By October 1, 2011, the commission and council each shall propose a rule for~~
6293 ~~legislative approval in accordance with article three-a, chapter twenty-nine-a of this code~~
6294 ~~to govern the fixing, collection and expenditure of tuition and other fees by the governing~~
6295 ~~boards under their respective jurisdictions.~~

6296 (e) The schedule of all tuition and fees, and any changes in the schedule, shall be
6297 entered in the minutes of the meeting of the appropriate governing board and the board
6298 shall file with the ~~commission~~ OPE or council, or both, as appropriate, and the
6299 Legislative Auditor a certified copy of the schedule and changes.

6300 (f e) The governing boards shall establish the rates to be charged full-time students, as
6301 defined in section one-b of this article, who are enrolled during a regular academic term.
6302 A governing board shall require by rule all fees be due not later than the end of the
6303 academic term, and shall provide for appropriate measures to provide for collections of
6304 fees past due.

6305 (1) Undergraduate students taking fewer than twelve credit hours in a regular term shall
6306 have their fees reduced pro rata based upon one twelfth of the full-time rate per credit
6307 hour and graduate students taking fewer than nine credit hours in a regular term shall
6308 have their fees reduced pro rata based upon one ninth of the full-time rate per credit
6309 hour.

6310 (2) Fees for students enrolled in summer terms or other nontraditional time periods shall
6311 be prorated based upon the number of credit hours for which the student enrolls in
6312 accordance with this subsection.

6313 (3) The governing boards may establish rates applicable to tuition and fees for online
6314 course delivery without regard to the limitations contained in this subsection.

6315 (g_f) All fees are due and payable by the student upon enrollment and registration for
6316 classes except as provided in this subsection:

6317 (1) The governing boards shall permit fee payments to be made in installments over the
6318 course of the academic term.

6319 (2) The governing boards also shall authorize the acceptance of credit cards or other
6320 payment methods which may be generally available to students for the payment of fees.
6321 The governing boards may charge the students for the reasonable and customary
6322 charges incurred in accepting credit cards and other methods of payment.

6323 (3) If a governing board determines that a student's finances are affected adversely by a
6324 legal work stoppage, it may allow the student an additional six months to pay the fees for
6325 any academic term. The governing board shall determine on a case-by-case basis
6326 whether the finances of a student are affected adversely.

6327 (4) A governing board may charge interest or fees for any deferred or installment
6328 payment plans.

6329 (h_g) In addition to the other fees provided in this section, each governing board may
6330 impose, collect and distribute a fee to be used to finance a nonprofit, student-controlled
6331 public interest research group if the students at the institution demonstrate support for
6332 the increased fee in a manner and method established by that institution's elected
6333 student government. The fee may not be used to finance litigation against the institution.

6334 (i_h) Governing boards shall retain tuition and fee revenues not pledged for bonded
6335 indebtedness or other purposes. ~~in accordance with the tuition rules proposed by the~~
6336 ~~commission and council pursuant to this section. The tuition rules shall address the~~
6337 ~~following areas:~~

- 6338 ~~(1) Providing a basis for establishing nonresident tuition and fees;~~
- 6339 ~~(2) Allowing governing boards to charge different tuition and fees for different programs;~~
- 6340 ~~(3) Authorizing a governing board to propose to the commission, council or both, as~~
6341 ~~appropriate, a mandatory auxiliary fee under the following conditions: Provided, That the~~
6342 ~~governing boards for the exempted schools may authorize a mandatory auxiliary fee~~
6343 ~~without seeking approval of the commission:~~
- 6344 ~~(A) The fee shall be approved by the commission, council or both, as appropriate, and~~
6345 ~~either the students below the senior level at the institution or the Legislature before~~
6346 ~~becoming effective;~~
- 6347 ~~(B) Increases may not exceed previous state subsidies by more than ten percent;~~
- 6348 ~~(C) The fee may be used only to replace existing state funds subsidizing auxiliary~~
6349 ~~services such as athletics or bookstores;~~
- 6350 ~~(D) If the fee is approved, the amount of the state subsidy shall be reduced annually by~~
6351 ~~the amount of money generated for the institution by the fees. All state subsidies for the~~
6352 ~~auxiliary services shall cease five years from the date the mandatory auxiliary fee is~~
6353 ~~implemented;~~
- 6354 ~~(4) Establishing methodology, where applicable, to ensure that, within the appropriate~~
6355 ~~time period under the compact, community and technical college tuition rates for~~
6356 ~~students in all community and technical colleges will be commensurate with the tuition~~
6357 ~~and fees charged by their peer institutions.~~
- 6358 ~~(j) A penalty may not be imposed by the commission or council upon any governing~~
6359 ~~board based upon the number of nonresidents who attend the institution unless the~~

6360 ~~commission or council determines that admission of nonresidents to any institution or~~
6361 ~~program of study within the institution is impeding unreasonably the ability of resident~~
6362 ~~students to attend the institution or participate in the programs of the institution. The~~
6363 ~~governing boards shall report annually to the commission or council on the numbers of~~
6364 ~~nonresidents and any other enrollment information the commission or council may~~
6365 ~~request.~~

6366 (k_i) Tuition and fee increases of the governing boards, except the exempted schools
6367 and Shepherd University, are shall be subject to rules adopted by the ~~commission~~ OPE
6368 ~~and council, pursuant to this section and in accordance with article three-a, chapter~~
6369 ~~twenty-nine-a of this code. The commission or council, as appropriate, shall examine~~
6370 ~~individually each request from a governing board, including the exempted schools, for an~~
6371 ~~increase and make its determinations as follows:~~

6372 (1) A Prior to submitting any tuition and fee increase for resident students ~~proposed by a~~
6373 ~~governing board requires the approval of the commission~~ OPE ~~or council, as~~
6374 ~~appropriate, for any tuition and fee increase greater than~~ that exceeds ten percent in any
6375 one year or where the increase would be more than seven percent per year, averaged
6376 over a rolling three year period calculated by averaging the proposed increase with the
6377 increase for the immediate two previous years; the governing board seeking the
6378 exemption must declare that the institution is confronting a financial exigency and that
6379 the increase in tuition and fees is vital to the institution's ability to survive.

6380 (2) ~~In determining whether to approve or deny a governing board's request for a tuition~~
6381 ~~and/or fee increase for resident students greater than the increases granted pursuant to~~
6382 ~~subdivision (1) of this subsection, the commission or council shall determine the~~
6383 ~~progress the governing board has made toward meeting the conditions outlined in this~~

6384 subsection and shall make this determination the predominate factor in its decision. The
6385 commission or council shall consider the degree to which each governing board has met
6386 the following conditions:

6387 (A) Maximizes resources available through nonresident tuition and fee charges to the
6388 satisfaction of the commission or council;

6389 (B) Consistently achieves the benchmarks established in the compact pursuant to article
6390 one-d of this chapter or the master plan for exempted schools in article two-a of this
6391 chapter, including the provisions of article one-d required in the master plan;

6392 (C) Continuously pursues the statewide goals for post-secondary education;

6393 (D) Demonstrates to the satisfaction of the commission or council that an increase will
6394 be used to maintain high-quality programs at the institution;

6395 (E) Demonstrates to the satisfaction of the commission or council that the governing
6396 board is making adequate progress toward achieving the goals for education established
6397 by the Southern Regional Education Board;

6398 (F) Demonstrates to the satisfaction of the commission or council that the governing
6399 board has considered the average per capita income of West Virginia families and their
6400 ability to pay for any increases; and

6401 (G) Demonstrates to the satisfaction of the commission or council that base
6402 appropriation increases have not kept pace with recognized nationwide inflationary
6403 benchmarks.

6404 (3) This section does not require equal increases among governing boards nor does it
6405 require any level of increase by a governing board.

6406 ~~(4) The commission and council shall report to the Legislative Oversight Commission on~~
6407 ~~Education Accountability regarding the basis for approving or denying each request as~~
6408 ~~determined using the criteria established in this subsection.~~

6409 92. West Virginia Code §18B-10-2 is hereby amended as follows:

6410 **§18B-10-2. ~~Higher education~~ Community and technical college resource**
6411 **assessment.**

6412 (a) Pursuant to the authority granted by section four, article one-b of this chapter, and
6413 section six, article two-b of this chapter, the ~~commission and council jointly~~ shall
6414 establish a ~~higher~~ community and technical college education resource assessment per
6415 student for each ~~state institution of higher education under their respective jurisdictions~~
6416 community and technical college. Community and technical colleges shall transfer all
6417 funds collected pursuant to this section to the council. ~~All other institutions shall transfer~~
6418 ~~all funds collected pursuant to this section to the commission.~~ Any reference in this code
6419 to ~~higher education~~ community and technical college resource fee means this higher
6420 education resource assessment.

6421 (b) The ~~commission and council jointly~~ shall fix the assessment for the various
6422 ~~institutions and~~ classes of students and may periodically change these assessments.
6423 ~~The amount of the assessment for each institution shall be prorated for part-time~~
6424 ~~students.~~

6425 (c) Each ~~institution~~ community and technical college shall maintain a level of support for
6426 libraries and library supplies, including books, periodicals, subscriptions and audiovisual
6427 materials, instructional equipment and materials; and for the improvement in quality and
6428 scope of student services comparable to that level supported by the higher education

6429 resource fee previously authorized by this section.

6430 (d) The assessment shall be expended or allocated by the ~~commission~~ or council to
6431 meet its general operating expenses or to fund statewide programs. To the maximum
6432 extent practicable, the ~~commission~~ and council shall offset the impact, if any, on
6433 financially needy students of any potential assessment increase under this section by
6434 allocating an appropriate amount of the revenue to the state scholarship program to be
6435 expended in accordance with the provisions of article five, chapter eighteen-c of this
6436 code.

6437 93. West Virginia Code §18B-10-4 is hereby amended as follows:

6438 **§18B-10-4. Medical education.**

6439 ~~The commission shall determine an appropriate portion of all tuition and fees paid by~~
6440 ~~medical students enrolled for credit at the West Virginia University school of medicine,~~
6441 ~~Marshall university school of medicine and the West Virginia school of osteopathic~~
6442 ~~medicine to be used to support the health education student loan fund. The portion~~
6443 ~~determined by the commission for this purpose shall be deposited into the health~~
6444 ~~education student loan fund account in accordance with the provisions of article three,~~
6445 ~~chapter eighteen-c of this code.~~

6446 94. West Virginia Code §18B-10-8 is hereby amended as follows:

6447 **§18B-10-8. Collection; disposition and use of capital and auxiliary capital fees;**
6448 **creation of special capital and auxiliary capital improvements funds; revenue**
6449 **bonds.**

6450 (a) This section and any rules adopted by the ~~commission~~ OPE, council or both, in
6451 accordance with this section and article three-a, chapter twenty-nine-a of this code,

6452 govern the collection, disposition and use of the capital and auxiliary capital fees
6453 authorized by section one of this article. The statutory provisions governing collection
6454 and disposition of capital funds in place prior to the enactment of this section remain in
6455 effect.

6456 (b) Fees for full-time students. — The governing boards shall fix capital and auxiliary
6457 capital fees for full-time students at each state institution of higher education per
6458 semester. For institutions under its jurisdiction, a governing board may fix the fees at
6459 higher rates for students who are not residents of this state.

6460 (c) Fees for part-time students. — For all part-time students and for all summer school
6461 students, the governing boards shall impose and collect the fees in proportion to, but not
6462 exceeding, the fees paid by full-time students. Refunds of the fees may be made in the
6463 same manner as any other fee collected at state institutions of higher education.

6464 (d) There is continued in the State Treasury a special capital improvements fund and
6465 special auxiliary capital improvements fund for each state institution of higher education
6466 and the ~~commission~~ OPE into which shall be paid all proceeds, respectively, of the
6467 following:

6468 (1) The capital and auxiliary capital fees collected from students at all state institutions of
6469 higher education pursuant to this section; and

6470 (2) The fees collected from the students pursuant to section one of this article. The fees
6471 shall be expended by the ~~commission~~ OPE and governing boards for the payment of the
6472 principal of or interest on any revenue bonds issued by the board of regents or the
6473 succeeding governing boards for which the fees were pledged prior to the enactment of
6474 this section.

6475 (e) The governing boards may make expenditures from any of the special capital
6476 improvements funds or special auxiliary capital improvement funds established in this
6477 section to finance or fund on a cash basis, in whole or in part, in combination with any
6478 federal, state or other grants or contributions, for any one or more of the following
6479 projects:

6480 (1) The acquisition of land or any rights or interest in land;

6481 (2) The construction or acquisition of new buildings;

6482 (3) The renovation or construction of additions to existing buildings;

6483 (4) The acquisition of furnishings and equipment for the buildings; and

6484 (5) The construction or acquisition of any other capital improvements or capital
6485 education facilities at the state institutions of higher education, including any roads,
6486 utilities or other properties, real or personal, or for other purposes necessary,
6487 appurtenant or incidental to the construction, acquisition, financing and placing in
6488 operation of the buildings, capital improvements or capital education facilities, including
6489 student unions, dormitories, housing facilities, food service facilities, motor vehicle
6490 parking facilities and athletic facilities.

6491 (f) The ~~commission~~ OPE, when singly or jointly requested by the council or governing
6492 boards, periodically may issue revenue bonds of the state as provided in this section to
6493 finance all or part of the purposes and pledge all or any part of the moneys in the special
6494 funds for the payment of the principal of and interest on the revenue bonds, and for
6495 reserves for the revenue bonds. Any pledge of the special funds for the revenue bonds
6496 shall be a prior and superior charge on the special funds over the use of any of the
6497 moneys in the funds to pay for the cost of any of the purposes on a cash basis. Any

6498 expenditures from the special funds, other than for the retirement of revenue bonds, may
6499 be made by the ~~commission~~ OPE or governing boards only to meet the cost of a
6500 predetermined capital improvements program for one or more of the state institutions of
6501 higher education, in the order of priority agreed upon by the governing board or boards
6502 and the ~~commission~~ OPE and for which the aggregate revenue collections projected are
6503 presented to the Governor for inclusion in the annual budget bill, and are approved by
6504 the Legislature for expenditure. Any expenditure made pursuant to subsection (e) of this
6505 section shall be part of the ten-year campus development plan approved by the
6506 governing board pursuant to section three, article nineteen of this chapter.

6507 (g) The revenue bonds periodically may be authorized and issued by the ~~commission~~
6508 OPE or governing boards to finance, in whole or in part, the purposes provided in this
6509 section in an aggregate principal amount not exceeding the amount which the
6510 ~~commission~~ OPE determines can be paid as to both principal and interest and
6511 reasonable margins for a reserve therefor from the moneys in the special funds.

6512 (h) The issuance of the revenue bonds by schools other than the exempted schools shall
6513 be authorized by a resolution adopted by the governing board receiving the proceeds
6514 and the ~~commission~~ OPE, and the revenue bonds shall bear the date or dates; mature at
6515 such time or times not exceeding forty years from their respective dates; be in such form
6516 either coupon or registered, with such exchangeability and interchangeability privileges;
6517 be payable in such medium of payment and at such place or places, within or without the
6518 state; be subject to such terms of prior redemption at such prices not exceeding one
6519 hundred five per centum of the principal amount thereof; and have the other terms and
6520 provisions determined by the governing board receiving the proceeds and by the
6521 ~~commission~~ OPE. The revenue bonds issued by schools other than the exempted
6522 schools shall be signed by the Governor and by the chancellor of the ~~commission~~ OPE

6523 or the chair of the governing boards authorizing the issuance of the revenue bonds,
6524 under the Great Seal of the state, attested by the Secretary of State, and the coupons
6525 attached to the revenue bonds shall bear the facsimile signature of the chancellor of the
6526 ~~commission~~ OPE or the chair of the appropriate governing boards. The revenue bonds
6527 shall be sold in the manner the ~~commission~~ OPE or governing board determines is in the
6528 best interests of the state.

6529 (i) The issuance of the revenue bonds by exempted schools shall be authorized by a
6530 resolution adopted by the governing board receiving the proceeds, and the revenue
6531 bonds shall bear the date or dates; mature at such time or times not exceeding one
6532 hundred years from their respective dates; be in such form either coupon or registered,
6533 with such exchangeability and interchangeability privileges; be payable in such medium
6534 of payment and at such place or places, within or without the state; be subject to such
6535 terms of prior redemption at such prices not exceeding one hundred five per centum of
6536 the principal amount thereof; and have the other terms and provisions determined by the
6537 governing board receiving the proceeds. The revenue bonds shall be signed by the
6538 Governor and the chair of the governing boards authorizing the issuance of the revenue
6539 bonds, under the Great Seal of the state, attested by the Secretary of State, and the
6540 coupons attached to the revenue bonds shall bear the facsimile signature of the chair of
6541 the appropriate governing boards. The revenue bonds shall be sold in the manner the
6542 governing board determines is in the best interests of the state.

6543 (j) The ~~commission~~ OPE or governing boards may enter into trust agreements with
6544 banks or trust companies, within or without the state, and in the trust agreements or the
6545 resolutions authorizing the issuance of the bonds may enter into valid and legally binding
6546 covenants with the holders of the revenue bonds as to the custody, safeguarding and
6547 disposition of the proceeds of the revenue bonds, the moneys in the special funds,

6548 sinking funds, reserve funds or any other moneys or funds; as to the rank and priority, if
6549 any, of different issues of revenue bonds by the ~~commission~~ OPE or governing boards
6550 under this section; as to the maintenance or revision of the amounts of the fees; as to
6551 the extent to which swap agreements, as defined in subsection (h), section two, article
6552 two-g, chapter thirteen of this code shall be used in connection with the revenue bonds,
6553 including such provisions as payment, term, security, default and remedy provisions as
6554 the ~~commission~~ OPE considers necessary or desirable, if any, under which the fees may
6555 be reduced; and as to any other matters or provisions which are considered necessary
6556 and advisable by the ~~commission~~ OPE or governing boards in the best interests of the
6557 state and to enhance the marketability of the revenue bonds.

6558 (k) After the issuance of any revenue bonds, the fees at the state institutions of higher
6559 education pledged to the payment of the revenue bonds may not be reduced as long as
6560 any of the revenue bonds are outstanding and unpaid except under the terms, provisions
6561 and conditions contained in the resolution, trust agreement or other proceedings under
6562 which the revenue bonds were issued. The revenue bonds are and constitute negotiable
6563 instruments under the Uniform Commercial Code of this state; together with the interest
6564 thereon, be exempt from all taxation by the State of West Virginia, or by any county,
6565 school district, municipality or political subdivision thereof; and the revenue bonds may
6566 not be considered to be obligations or debts of the state and the credit or taxing power of
6567 the state may not be pledged therefor, but the revenue bonds shall be payable only from
6568 the revenue pledged therefor as provided in this section.

6569 (l) Additional revenue bonds may be issued by the ~~commission~~ OPE or governing
6570 boards pursuant to this section and financed by additional revenues or funds dedicated
6571 from other sources. The special revenue fund in the State Treasury known as the
6572 Community and Technical College Capital Improvement Fund into which shall be

6573 deposited the amounts specified in subsection (j), section eighteen, article twenty-two,
6574 chapter twenty-nine of this code is continued. All amounts deposited in the fund shall be
6575 pledged to the repayment of the principal, interest and redemption premium, if any, on
6576 any revenue bonds or refunding revenue bonds authorized by the ~~commission~~ OPE for
6577 community and technical college capital improvements or used by the council on a cash
6578 basis as provided under subdivision (4), subsection (j), section eighteen, article twenty-
6579 two, chapter twenty-nine of this code for community and technical college capital
6580 improvements or capital projects.

6581 (m) Funding of systemwide and campus-specific revenue bonds under any other section
6582 of this code is continued and authorized pursuant to the terms of this section. Revenues
6583 of any state institution of higher education pledged to the repayment of any revenue
6584 bonds issued pursuant to this code shall remain pledged.

6585 (n) Any revenue bonds for state institutions of higher education proposed to be issued
6586 under this section or other sections of this code first must be approved by the Governor
6587 and:

6588 (1) approved by the governing board for revenue bonds issued by the exempted
6589 schools;

6590 (2) confirmed by the ~~commission~~ OPE, for revenue bonds issued by institutions under
6591 the jurisdiction of the ~~commission~~ OPE, or

6592 (3) approved by the council and the ~~commission~~ OPE, for revenue bonds issued by
6593 institutions under the jurisdiction of the council.

6594 (o) Revenue bonds issued pursuant to this code may be issued by the ~~commission~~ OPE
6595 or governing boards, either singly or jointly.

6596 (p) Fees pledged for repayment of revenue bonds issued under this section or article
6597 twelve-b, chapter eighteen prior to or after the effective date of this section shall be
6598 transferred to the ~~commission~~OPE in a manner prescribed by the ~~commission~~OPE.
6599 The ~~commission~~OPE may transfer funds from the accounts of institutions pledged for
6600 the repayment of revenue bonds issued prior to the effective date of this section or
6601 issued subsequently by the ~~commission~~OPE upon the request of institutions, if an
6602 institution fails to transfer the pledged revenues to the ~~commission~~OPE in a timely
6603 manner.

6604 (q) Effective July 1, 2004, the capital and auxiliary capital fees authorized by this section
6605 and section one of this article are in lieu of any other fees set out in this code for capital
6606 and auxiliary capital projects to benefit public higher education institutions.
6607 Notwithstanding any other provisions of this code to the contrary, in the event any
6608 capital, tuition, registration or auxiliary fees are pledged to the payment of any revenue
6609 bonds issued pursuant to any general bond resolutions of the ~~commission~~OPE, any of
6610 its predecessors or any institution, adopted prior to the effective date of this section, the
6611 fees shall remain in effect in amounts not less than the amounts in effect as of that date,
6612 until the revenue bonds payable from any of the fees have been paid or the pledge of
6613 the fees is otherwise legally discharged.

6614 95. West Virginia Code §18B-11B-2 is hereby amended as follows:

6615 **§18B-11B-2. West Virginia Poison Center continued; certification.**

6616 (a) The West Virginia Poison Center (hereinafter referred to as "the Center") currently a
6617 part of and located at the Robert C. Byrd Health Sciences Center, West Virginia
6618 University, Charleston Division and operated by West Virginia University, is hereby
6619 continued as a special service under West Virginia University.

6620 (b) The center shall be certified by the American Association of Poison Centers or other
6621 similar organization with the same or higher certification standards, and shall have a
6622 director who is a board certified toxicologist.

6623 (c) The West Virginia Poison Center is exempt from temporary budget hiring freezes that
6624 may apply to colleges and universities under the ~~Higher Education Policy Commission~~
6625 OPE.

6626 96. West Virginia Code §18B-11B-3 is hereby amended as follows:

6627 **§18B-11B-3. Advisory Board.**

6628 There is hereby created the West Virginia Poison Center Advisory Board (hereinafter
6629 referred to as the board). The board shall be composed of eight members. The members
6630 include: ~~The Chancellor of the West Virginia Higher Education Policy Commission~~ the
6631 director of the OPE or his or her designee; the Secretary of the Department of Military
6632 Affairs and Public Safety or his or her designee; the Commissioner of the Bureau for
6633 Public Health or his or her designee; the Associate Vice President of West Virginia
6634 University, Health Sciences Center, West Virginia University, Charleston, West Virginia,
6635 who shall be chairman of the board; the president of the West Virginia Hospital
6636 Association or his or her designee; two members appointed by the Director of the Poison
6637 Center who shall represent professional health care organizations in this state with
6638 extensive experience in public health education, research or administration; and one
6639 member appointed by the Director of the Poison Center to represent the general public.
6640 All appointed members shall serve terms of four years and may be reappointed.
6641 Appointed members of the advisory board shall serve without compensation, but may be
6642 reimbursed for any necessary and reasonable expenses incurred in attending meetings
6643 on the same basis as members of the Legislature are reimbursed for expenses.

6644 The board shall provide advice and assistance to the director of the center in providing
6645 services as set out in this article. The board shall meet not less than two times each year
6646 on the call of the chair. Not later than July 1, of each year, the board shall prepare an
6647 annual report for the calendar year for submission to the Governor and the Legislature.
6648 The report shall include an analysis of the activities of the center and any
6649 recommendations for improvement the board may deem necessary or appropriate.

6650 97. West Virginia Code §18B-13-3 is hereby amended as follows:

6651 **§18B-13-3. Powers and duties.**

6652 (a) The West Virginia Development Office, ~~in consultation with the Commission,~~ is
6653 hereby authorized and directed to develop a strategic comprehensive plan and grant
6654 program to attract new science and high technology industries, to retain and expand
6655 current state industries through technology and other processes and to increase
6656 research grants, contracts, matching funds and procurement arrangements from the
6657 federal government, private industry and other agencies. The initial strategic
6658 comprehensive plan and each annual plan update shall be developed and filed with the
6659 Governor and Legislature.

6660 (b) The West Virginia Development Office, ~~in consultation with the Commission,~~ shall
6661 review the work and projects undertaken by the Center of Regional Progress, the Center
6662 for Economic Research, the Institute for International Trade Development and the West
6663 Virginia Foundation for Science and Technology.

6664 98. West Virginia Code §18B-13-5 is hereby amended as follows:

6665 **§18B-13-5. Use of state property and equipment; faculty.**

6666 (a) The governing boards are authorized to provide for the low cost and economical use

6667 and sharing of state property and equipment, including computers, research labs and
6668 other scientific and necessary equipment to assist any qualified business within an
6669 approved research park or zone or technology center. ~~The commission shall approve a~~
6670 ~~schedule of nominal or reduced-cost reimbursements to the state for such use.~~

6671 (b) The governing boards shall develop and provide for a program of release time,
6672 sabbaticals or other forms of faculty involvement or participation with any qualifying
6673 business.

6674 ~~(c) The Legislature finds that cooperation, communication and coordination are integral~~
6675 ~~components of higher education's involvement in economic development. In order to~~
6676 ~~proceed in a manner that is cost effective and time efficient, it is the duty of the~~
6677 ~~commission to review and coordinate such aspects of the programs administered by the~~
6678 ~~governing boards. The review and coordination may not operate to affect adversely~~
6679 ~~sources of funding or any statutory characterization of any program as an independent~~
6680 ~~entity.~~

6681 99. West Virginia Code §18B-14-10 is hereby amended as follows:

6682 **§18B-14-10. Credit card solicitation on college campuses; regulation of credit card**
6683 **marketing.**

6684 (a) Definitions. — For the purposes of this section, the following terms have the following
6685 meanings:

6686 (1) "College campus" includes the premises and grounds of an institution of higher
6687 education;

6688 (2) "Credit card debt education brochure" means the information developed by a college
6689 or university, by a registered nonprofit corporation or by other sources as identified and

6690 approved by the institution of higher education, that details the appropriate use, benefits
6691 and risks of incurring debt through the use of credit cards;

6692 (3) "Credit card marketer" includes a person, corporation, financial institution or business
6693 entity that promotes, offers or accepts applications for a credit card;

6694 (4) "Institution of higher education" means any of the following:

6695 (i) A community college or technical college as defined in subsection (e), section two,
6696 article one of this chapter; and

6697 (ii) Bluefield state college, Concord college, Glenville state college, Fairmont state
6698 college, Marshall university, West Virginia northern community college, West Liberty
6699 state college, Potomac state college of West Virginia University, Shepherd college, West
6700 Virginia University institute of technology, southern West Virginia community institute of
6701 technology, West Virginia University at Parkersburg, West Virginia school of osteopathic
6702 medicine, West Virginia state college, West Virginia University and all branch campuses
6703 of these institutions of higher education; and

6704 (5) "Student" means a person who is at least eighteen years of age and who attends an
6705 institution of higher education whether on a full-time or part-time basis.

6706 (b) The governing boards of each institution shall ~~propose~~ maintain rules ~~in accordance~~
6707 ~~with the rule adopted by the Higher Education Policy Commission~~ pursuant to the
6708 provisions of section six, article one of this chapter ~~no later than July 1, 2003,~~ to regulate
6709 the marketing practices used on campuses by credit card companies. In ~~proposing~~
6710 maintaining these rules, the governing boards shall consider the following requirements:

6711 (1) Registering on-campus credit card marketers;

6712 (2) Limiting credit card marketers to specific institutional campus sites designated by the
6713 president or administrative head of the institution or his or her designee;

6714 (3) Prohibiting credit card marketers from offering tangible gifts to students in exchange
6715 for completing a credit card application;

6716 (4) Requiring that no application for the extension of debt through a credit card may be
6717 made available to a student unless the application is accompanied by a credit card debt
6718 education brochure;

6719 (5) Whether or not to use or the appropriate use of student lists for the purpose of
6720 soliciting applications for credit cards; and

6721 (6) Developing a credit card debt education presentation to be incorporated into
6722 orientation programs offered to new students.

6723 (c) Unless a student's parent or guardian has agreed in writing to be liable as a cosigner
6724 for credit card debts of the student, no person may initiate a debt collection action
6725 against the parent or guardian regarding any credit card debt incurred by the student.

6726 100. West Virginia Code §18B-17-2 is hereby amended as follows:

6727 ~~§18B-17-2. Authorizing rules of Higher Education Policy Commission.~~

6728 ~~(a) The legislative rule filed in the State Register on October 15, 2004, relating to the~~
6729 ~~Higher Education Policy Commission (Underwood-Smith Teacher Scholarship Program~~
6730 ~~rule) is authorized.~~

6731 ~~(b) The legislative rule filed in the State Register on October 15, 2004, relating to the~~
6732 ~~Higher Education Policy Commission (West Virginia Engineering, Science and~~
6733 ~~Technology Scholarship Program rule) is authorized.~~

6734 ~~(c) The legislative rule filed in the State Register on October 15, 2004, relating to the~~
6735 ~~Higher Education Policy Commission (Medical Education Fee and Medical Student Loan~~
6736 ~~Program rule) is authorized.~~

6737 ~~(d) The legislative rule filed in the State Register on October 27, 2005, relating to the~~
6738 ~~Higher Education Policy Commission (Authorization of degree-granting institutions) is~~
6739 ~~authorized.~~

6740 ~~(e) The legislative rule filed in the State Register on August 23, 2006, relating to the~~
6741 ~~Higher Education Policy Commission (West Virginia Higher Education Grant Program) is~~
6742 ~~authorized.~~

6743 ~~(f) The legislative rule filed in the State Register on January 4, 2008, relating to the~~
6744 ~~Higher Education Policy Commission (Providing Real Opportunities for Maximizing In-~~
6745 ~~state Student Excellence - PROMISE) is authorized.~~

6746 ~~(g) The legislative rule filed in the State Register on August 25, 2008, relating to the~~
6747 ~~Higher Education Policy Commission (Research Trust Program) is authorized.~~

6748 ~~(h) The legislative rule filed in the State Register on January 8, 2009, relating to the~~
6749 ~~Higher Education Policy Commission (Guidelines for Governing Boards in Employing~~
6750 ~~and Evaluating Presidents) is authorized.~~

6751 ~~(i) The legislative rule filed in the State Register on September 10, 2008, relating to the~~
6752 ~~Higher Education Policy Commission (Medical Student Loan Program) is authorized,~~
6753 ~~with the following amendment:~~

6754 ~~On page 2, subsection 5.1, following the words "financial aid office" by inserting a new~~
6755 ~~subdivision 5.1.3 to read as follows: "United States citizenship or legal immigrant status~~
6756 ~~while actively pursuing United States citizenship."~~

6757 ~~(j) The legislative rule filed in the State Register on December 1, 2008, relating to the~~
6758 ~~Higher Education Policy Commission (West Virginia Higher Education Grant Program) is~~
6759 ~~authorized.~~

6760 ~~(k) The legislative rule filed in the State Register on January 26, 2009, relating to the~~
6761 ~~Higher Education Policy Commission (Accountability System) is authorized.~~

6762 ~~(l) The legislative rule filed in the State Register on May 20, 2009, relating to the Higher~~
6763 ~~Education Policy Commission (Energy and Water Savings Revolving Loan Fund~~
6764 ~~Program) is authorized.~~

6765 ~~(m) The legislative rule filed in the State Register on January 27, 2010, relating to the~~
6766 ~~Higher Education Policy Commission (Providing Real Opportunities for Maximizing In-~~
6767 ~~state Student Excellence – PROMISE) is authorized.~~

6768 ~~(n) The legislative rule filed in the State Register on December 8, 2010, relating to the~~
6769 ~~Higher Education Policy Commission (Authorization of Degree Granting Institutions) is~~
6770 ~~authorized.~~

6771 ~~On page 28, subsection 9.1.b, following the words “Good cause shall consist of” by~~
6772 ~~inserting the words “any one or more of the following”.~~

6773 ~~(o) The legislative rule filed in the State Register on December 12, 2011, relating to the~~
6774 ~~Higher Education Policy Commission (Tuition and Fee Policy) is authorized.~~

6775 ~~(p) The legislative rule filed in the State Register on August 10, 2012, relating to the~~
6776 ~~Higher Education Policy Commission (Authorization of Degree Granting Institutions) is~~
6777 ~~authorized.~~

6778 ~~(q) The legislative rule filed in the State Register on August 10, 2012, relating to the~~

6779 ~~Higher Education Policy Commission (Annual Reauthorization of Degree Granting~~
6780 ~~Institutions) is authorized.~~

6781 ~~(r) The legislative rule filed in the State Register on March 20, 2013, relating to the~~
6782 ~~Higher Education Policy Commission (Human Resources Administration) is authorized.~~

6783 ~~(s) The legislative rule filed in the State Register on January 24, 2014, relating to the~~
6784 ~~Higher Education Policy Commission (Capital Project Management) is authorized.~~

6785 ~~(t) The legislative rule filed in the State Register on April 4, 2014, relating to the Higher~~
6786 ~~Education Policy Commission (Underwood-Smith Teacher Scholarship Program) is~~
6787 ~~authorized.~~

6788 ~~(u) The legislative rule filed in the State Register on August 4, 2014, relating to the~~
6789 ~~Higher Education Policy Commission (Nursing Scholarship Program) is authorized.~~

6790 ~~(v) The legislative rule filed in the State Register on October 28, 2015, relating to the~~
6791 ~~Higher Education Policy Commission (Underwood-Smith Teacher Scholarship Program)~~
6792 ~~is authorized.~~

6793 ~~(w) The legislative rule filed in the State Register on October 28, 2015, relating to the~~
6794 ~~Higher Education Policy Commission (Nursing Scholarship Program) is authorized.~~

6795 ~~(x) The legislative rule filed in the State Register on December 20, 2016, relating to the~~
6796 ~~Higher Education Policy Commission (West Virginia Higher Education Grant Program) is~~
6797 ~~authorized.~~

6798 ~~(y) The legislative rule filed in the State Register on December 20, 2016, relating to the~~
6799 ~~Higher Education Policy Commission (Providing Real Opportunities for Maximizing In-~~
6800 ~~state Student Excellence - PROMISE) is authorized.~~

6801 ~~(z) The legislative rule filed in the State Register on December 20, 2016, relating to the~~
6802 ~~Higher Education Policy Commission (Research Trust Fund Program) is authorized.~~

6803 ~~(aa) The legislative rule filed in the State Register on December 20, 2016, relating to the~~
6804 ~~Higher Education Policy Commission (Annual Reauthorization of Degree-Granting~~
6805 ~~Institutions) is authorized.~~

6806 101. West Virginia Code §18B-17-4 is hereby amended as follows:

6807 **~~§18B-17-4. Higher education policy commission.~~**

6808 ~~(a) The legislative rule filed in the state register on February 2, 2001, and modified and~~
6809 ~~refiled on April 3, 2001, relating to the Higher Education Policy Commission (higher~~
6810 ~~education finance policy), is authorized.~~

6811 ~~(b) The legislative rule filed in the state register on November 20, 2001, relating to the~~
6812 ~~Higher Education Policy Commission (higher education report card rule), is authorized.~~

6813 102. West Virginia Code §18B-17-5 is hereby amended as follows:

6814 **§18B-17-5. Authorizing West Virginia providing real opportunities for maximizing**
6815 **in-state student excellence scholarship program (PROMISE).**

6816 The legislative rule filed in the state register on January 4, 2002, and modified and
6817 refiled on January 18, 2002, relating to the Higher Education Policy Commission (West
6818 Virginia providing real opportunities for maximizing in-state student excellence
6819 scholarship program -- PROMISE -- rule), is authorized.

6820 103. West Virginia Code §18B-17-6 is hereby amended as follows:

6821 **~~§18B-17-6. Authorizing rules of Higher Education Policy Commission.~~**

6822 ~~(a) The legislative rule filed in the state register on the August 25, 2003, relating to the~~
6823 ~~Higher Education Policy Commission (higher education adult part-time student grant~~
6824 ~~program -- HEAPS -- rule), is authorized.~~

6825 ~~(b) The legislative rule filed in the state register on the October 22, 2003, relating to the~~
6826 ~~Higher Education Policy Commission (purchasing efficiencies rule), is authorized.~~

6827 104. West Virginia Code §18B-18-6 is hereby amended as follows:

6828 **§18B-18-6. Duties of Higher Education Policy Commission Office of**
6829 **Postsecondary Education.**

6830 The ~~Higher Education Policy Commission~~ OPE shall:

6831 (a) Establish documentation standards and review procedures to determine the eligibility
6832 of donor gifts to participate in the eminent scholars program when the gift is initially
6833 received or whenever the terms are significantly changed;

6834 (b) Require that each participating institution report on total gifts received, investment
6835 earnings realized and anticipated expenditures in its annual operating budget request;

6836 (c) Annually develop and submit a consolidated budget request for the eminent scholars
6837 program to the Governor for the fiscal year beginning on July 1, 2003. The budget
6838 request shall include a request for an appropriation by the Legislature to each
6839 institutional account each fiscal year in an amount equal to the investment earnings in
6840 the previous fiscal year which are intended for use in the fiscal year to supplement the
6841 salaries of eminent scholars;

6842 (d) Allocate any funds appropriated by the Legislature among the participating
6843 institutions in equal installments at the beginning of each quarter.

6844 105. West Virginia Code §18B-18-7 is hereby amended as follows:

6845 **§18B-18-7. Process for preparation of executive budget.**

6846 (a) The Governor shall consider for inclusion in the appropriate account the budget
6847 request of the ~~policy commission~~ OPE for the eminent scholars program.

6848 (b) Whether or not the Governor includes the budget request of the ~~policy commission~~
6849 OPE as described in subsection (a) of this section, the Legislature may include an
6850 appropriation in the appropriate account.

6851 (c) Nothing in this section shall be construed to require any specific level of funding by
6852 the Legislature.

6853 106. West Virginia Code §18B-18A-1 is hereby amended as follows:

6854 **§18B-18A-1. Legislative findings; purpose; and intent.**

6855 (a) The Legislature finds that the continued expansion of the nation's economy is
6856 dependent upon the ability of its institutions of higher education to increase the quality,
6857 quantity and productivity of its citizens who are engaged in scientific and technical fields
6858 of study. Failure of the United States to compete in these areas may lead to lower
6859 standards of living, dependence upon foreign intellectual capital and international
6860 insecurity. The economic future of West Virginia is equally dependent upon the ability of
6861 Marshall University and West Virginia University, the state's two doctoral-granting, public
6862 research universities, as well as its other higher education institutions to promote,
6863 educate and train researchers and research support staff in these diverse fields of study.

6864 The Legislature further finds that a recent emphasis on the creation of innovative
6865 curricula and the receipt of significant private donations by Marshall University and West

6866 Virginia University has led to major expansions in certain areas of study, including
6867 energy, national security technology, environmental sciences, health and biomedical
6868 sciences, biometrics, biotechnology and nanotechnology. Despite these expansions, the
6869 additional investment of both private donations and state moneys is critical to recruiting
6870 world-class scientists, researchers, research staff, technicians and professional degree
6871 graduates, as well as providing funding for laboratories and scientific equipment.

6872 (b) The purpose of the Legislature in enacting this article is to establish a state fund to
6873 be administered by the ~~Higher Education Policy Commission~~ OPE to address the
6874 findings outlined in subsection (a) of this section. The fund will make public moneys
6875 available to the state's two doctoral-granting public research universities, Marshall
6876 University and West Virginia University, and a state land grant higher education
6877 institution, West Virginia State University, to match qualified private donations and
6878 qualified private donation pledges; thereby creating an incentive for donors to support
6879 certain priority areas of study consistent with each participating institution's long-range
6880 strategic plan for research. Creation of this fund promotes strategic private donations
6881 targeted to specific areas of research and creates a sustainable source of funding for
6882 research initiatives that are critical to achieving long-term goals including, but not limited
6883 to, the following:

6884 (1) Research-based economic development and economic diversification; and

6885 (2) Increased potential for patenting, licensing and related technology transfer and
6886 commercialization of scientific and technological research in the state.

6887 107. West Virginia Code §18B-18A-3 is hereby amended as follows:

6888 **§18B-18A-3. West Virginia Research Trust Fund; use of investment earnings.**

6889 (a) There is continued in the State Treasury a special fund to be known as the West
6890 Virginia Research Trust Fund which shall consist of appropriations of moneys to the fund
6891 made by the Legislature, all earnings from investment of the fund and any unmatched
6892 portion of state moneys returned by a state institution of higher education.

6893 (b) Expenditures from the trust fund shall be made for the purposes set forth in this
6894 article and are not subject to separate appropriation by the Legislature. Any balance in
6895 the trust fund at the end of each fiscal year, including accrued investment earnings on
6896 any unmatched portion of state moneys returned by a state institution of higher
6897 education, does not expire to the General Revenue Fund, but remains in the trust fund to
6898 be expended as provided by this article.

6899 (c) In accordance with and subject to the provisions of section eight of this article, the
6900 ~~commission~~ OPE shall make available moneys in this account to match qualified
6901 donations and qualified pledges as follows:

6902 (1) Sixty-five percent to West Virginia University;

6903 (2) Thirty percent to Marshall University; and

6904 (3) Five percent to West Virginia State University.

6905 (d) Investment earnings accruing in the account may be expended by the ~~commission~~
6906 OPE to provide matching research funds to state colleges in accordance with the
6907 provisions of section ten of this article.

6908 108. West Virginia Code §18B-18A-4 is hereby amended as follows:

6909 **§18B-18A-4. Directed research endowments.**

6910 (a) The governing board of each participating institution may create and administer or

6911 enter into an agreement with its research corporation and/or foundation to administer
6912 one or more directed research endowments to receive qualified donations and matching
6913 state moneys allocated for distribution to that institution.

6914 (b) A research endowment consists of qualified donations and
6915 matching moneys distributed by the ~~commission~~ OPE from the trust fund in accordance
6916 with the provisions of section eight of this article.

6917 (c) Subject to the following conditions, the governing board of a participating institution or
6918 its research corporation may invest moneys deposited into the research endowment
6919 either directly or through a foundation subject to the following conditions:

6920 (1) Any interest or other investment earnings on the moneys invested are retained by the
6921 participating institution to be used for the purposes set forth in this article;

6922 (2) Any investments authorized by this subsection are made in accordance with and
6923 subject to the provisions of the Uniform Prudent Investor Act codified as article six-c,
6924 chapter forty-four of this code; and

6925 (3) Any investments authorized by this subsection are not subject to the provisions of
6926 section twelve-d, article one, chapter twelve of this code.

6927 (d) Investment earnings accruing to a participating institution's research endowment,
6928 hereinafter referred to as endowment proceeds, may be expended by the governing
6929 board of the participating institution or its research corporation, subject to the provisions
6930 of section six of this article and the following conditions:

6931 (1) Endowment proceeds may be expended only for the eligible uses designated; and

6932 (2) The principal of a research endowment may not be expended for any purpose.

6933 (e) The governing board of a participating institution is exempt from liability for any loss
6934 or decrease in value of the assets or income of a directed research endowment, except
6935 as losses or decreases in value are shown to be the result of bad faith, gross negligence
6936 or intentional misconduct.

6937 (f) The governing board of each participating institution shall promulgate a rule or rules
6938 for the administration of research endowments that fulfills the purposes and
6939 requirements of this article and section six, article one of this chapter.

6940 109. West Virginia Code §18B-18A-6 is hereby amended as follows:

6941 **§18B-18A-6. Eligible uses of directed research endowment proceeds.**

6942 (a) Endowment proceeds may be expended by a participating institution or its affiliated
6943 research corporation for any of the following designated uses:

6944 (1) To pay the base salaries of newly endowed department chairs, new professorship
6945 positions, new research scientists and new research staff positions, including, but not
6946 limited to, research technicians and support personnel, and to fund affiliated graduate or
6947 undergraduate student research fellowships.

6948 All positions or fellowships shall be engaged primarily in one of the following areas of
6949 research:

6950 (A) Energy and environmental sciences;

6951 (B) Nanotechnology and materials science;

6952 (C) Biological, biotechnological and biomedical sciences;

6953 (D) Transportation technology and logistics;

6954 (E) Biometrics, security, sensing and related identification technologies; or

6955 (F) Gerontology; or

6956 (2) To purchase basic infrastructure directly related to an area of research identified in
6957 subdivision (1) of this subsection, including, but not limited to, laboratory and scientific
6958 equipment, and other essential equipment and materials.

6959 (b) Eligibility criteria regarding the expenditure of directed endowment proceeds to pay
6960 the base salaries of personnel, to fund student fellowships and to purchase basic
6961 infrastructure shall be established by rules of the ~~commission~~ OPE promulgated
6962 pursuant to section eleven of this article.

6963 110. West Virginia Code §18B-18A-7 is hereby amended as follows:

6964 **§18B-18A-7. Directed research endowment plans.**

6965 (a) To facilitate the goals of this article and to ensure the prudent expenditure of state
6966 moneys, the governing board of each participating institution shall submit to the
6967 ~~commission~~ OPE a directed research endowment plan.

6968 (b) The research plan shall include, but is not limited to, the following:

6969 (1) An assessment of the participating institution's current research initiatives, including
6970 any initiatives falling within an area of research identified in section six of this article;

6971 (2) An analysis of possible strategies to enhance current research initiatives;

6972 (3) An outline of the participating institution's proposed uses of endowment proceeds,
6973 including identification of any specific disciplinary hires, collaborations or acquisitions
6974 currently under consideration;

6975 (4) A list of proposed uses contained in the research plan including the anticipated costs
6976 associated with each proposed use;

6977 (5) An analysis of the anticipated costs compared to the expected endowment proceeds
6978 available to the institution;

6979 (6) An evaluation of how the research plan furthers the purposes of this article and
6980 addresses the research needs of the institution;

6981 (7) Identification of the proposed uses for which alternative funding sources may be
6982 sought to enhance the comprehensive research initiatives contemplated by the
6983 participating institution. Alternative funding sources exclude qualified donations,
6984 matching moneys from the trust fund and the endowment proceeds generated from the
6985 trust fund; and

6986 (8) Notation of the amount allocated for distribution to the participating institution
6987 pursuant to section three of this article.

6988 (c) The governing board of each participating institution shall submit its research plan to
6989 the ~~commission~~ OPE prior to submitting its first request for a distribution of matching
6990 moneys from the trust fund.

6991 111. West Virginia Code §18B-18A-8 is hereby amended as follows:

6992 **§18B-18A-8. Distributions from West Virginia Research Trust Fund.**

6993 (a) A participating institution seeking a distribution of matching moneys from the trust
6994 fund first shall obtain qualified donations, qualified pledges, or both, in an amount equal
6995 to the amount of matching moneys requested for distribution and shall submit a request
6996 to the ~~commission~~ OPE setting forth the following:

6997 (1) The amount of qualified donations, qualified pledges, or both, designated for use in
6998 requesting the distribution of matching moneys from the trust fund and the amount of
6999 any previous distributions of matching moneys from the trust fund;

7000 (2) The amount requested for distribution to the participating institution pursuant to
7001 section three of this article;

7002 (3) An explanation of how the proposed use satisfies the criteria for the eligible uses of
7003 endowment proceeds set forth in section six of this article;

7004 (4) An explanation of how the proposed use of the endowment proceeds furthers the
7005 purposes of this article and addresses the research needs of the institution as identified
7006 in the research plan; and

7007 (5) A designation of the applicable research endowment into which the requested
7008 matching moneys are to be deposited.

7009 (b) The ~~commission~~ OPE shall review each request for distribution of matching moneys
7010 from the trust fund for compliance with the provisions of this article and the rule
7011 promulgated pursuant to section eleven of this article.

7012 (c) Once the ~~commission~~ OPE approves the request of a participating institution, it shall
7013 distribute matching moneys from those allocated to the institution in the trust fund to the
7014 applicable research endowment in an amount equal to the amount of qualified
7015 donations, qualified pledges, or both.

7016 112. West Virginia Code §18B-18A-9 is hereby amended as follows:

7017 **§18B-18A-9. Reallocation of matching moneys.**

7018 (a) No later than seven years from the July 1, 2014, each participating institution shall

7019 have deposited into its research endowments an amount of qualified donations equal to
7020 or greater than the total amount of moneys allocated for distribution to the institution
7021 pursuant to the provisions of subsection (c), section three of this article.

7022 (1) If one of the participating institutions fails to have deposited into its research
7023 endowments the requisite amount of qualified donations by the end of the seven-year
7024 period, then any portion of the moneys allocated to the institution that has not been
7025 distributed shall be reallocated for distribution to the other participating institutions
7026 pursuant to the terms of this article.

7027 (2) To be eligible to receive a distribution of reallocated moneys pursuant to this
7028 subsection, another participating institution shall have qualified donations in excess of
7029 the amount required by subsection (a) of this section deposited into its research
7030 endowment(s) in an amount equal to or greater than the amount of reallocated moneys.

7031 (3) If another participating institution does not have excess qualified donations on
7032 deposit, the reallocated moneys shall be made available for distribution by the
7033 ~~commission~~ OPE to state colleges in accordance with the provisions of section ten of
7034 this article.

7035 (b) If any pledge previously used by a participating institution to obtain a distribution of
7036 matching moneys from the trust fund has not been paid in full within seven years from
7037 July 1, 2014, then the institution shall return the unmatched portion of state moneys to
7038 the trust fund. These moneys shall be reallocated for distribution to the other
7039 participating institutions or to the state colleges pursuant to the terms of this section and
7040 section ten of this article as applicable.

7041 (c) If all participating institutions fail to have deposited into their respective research

7042 endowments the requisite amount of qualified donations within seven years from July 1,
7043 2014, then any moneys remaining in the trust fund that have not been distributed shall
7044 be made available for distribution by the ~~commission~~ OPE to state colleges in
7045 accordance with the provisions of this article.

7046 113. West Virginia Code §18B-18A-10 is hereby amended as follows:

7047 **§18B-18A-10. Distributions to state colleges.**

7048 (a) The ~~commission~~ OPE may use a portion of those moneys derived from investment
7049 earnings accruing to the trust fund in accordance with the provisions of section three of
7050 this article, as well as moneys that are not distributed to participating institutions in
7051 accordance with the provisions of section nine of this article, to distribute state matching
7052 moneys to state colleges, as that term is defined in section two of this article.

7053 (b) In the rules required by section eleven of this article, the ~~commission~~ OPE shall
7054 establish procedures for the competitive application and review of requests from state
7055 colleges and criteria for the eligible use of moneys distributed pursuant to this section.

7056 (c) To qualify for a distribution of state matching moneys pursuant to this section, a state
7057 college shall meet the following conditions:

7058 (1) Obtain qualified donations in an amount equal to or greater than the amount of
7059 matching moneys requested for distribution from the trust fund; and

7060 (2) Deposit the qualified donations and any matching moneys distributed from the trust
7061 fund into the accounts of the institution or its affiliated research corporation or
7062 foundation.

7063 (d) State matching moneys may be expended only for a research-oriented initiative

7064 approved by the ~~commission~~ OPE.

7065 114. West Virginia Code §18B-18A-11 is hereby amended as follows:

7066 **§18B-18A-11. Higher Education Policy Commission Office of Postsecondary**
7067 **Education rule.**

7068 (a) The ~~commission's~~ Higher Education Policy Commission's legislative rule to
7069 implement the provisions and purposes of this article which is in effect on July 1, 2014,
7070 continues in effect under the administration of OPE unless repealed or amended in
7071 accordance with the provisions of section six, article one of this chapter and article three-
7072 a, chapter twenty-nine-a of this code. The rule shall be interpreted to include West
7073 Virginia State University as a participating institution as provided in this article.

7074 (b) The rule shall include the following:

7075 (1) Documentation standards and review procedures to determine whether a donation or
7076 pledge meets the criteria of a qualified donation or qualified pledge when initially
7077 received or when the terms of a qualified donation or a qualified pledge are materially
7078 altered;

7079 (2) Eligibility criteria in accordance with the provisions of section six of this article for the
7080 expenditure of endowment proceeds to pay the base salaries of personnel, to fund
7081 research fellowships and to purchase basic infrastructure;

7082 (3) Procedures to ensure that endowment proceeds are expended in compliance with
7083 the provisions of this article;

7084 (4) A requirement for each participating institution to report on the total amount of
7085 qualified donations received, the investment earnings realized and any anticipated

7086 expenditures of the research endowment proceeds in its annual operating budget; and
7087 (5) Procedures for the competitive application and review of requests from state colleges
7088 and criteria for the eligible use of moneys distributed pursuant to section ten of this
7089 article.

7090 115. West Virginia Code §18B-18A-12 is hereby amended as follows:

7091 **§18B-18A-12. Annual report.**

7092 ~~By January 1, 2010, and annually thereafter~~ On January 1 of each year, the commission
7093 shall submit a report to the Governor, the President of the Senate, the Speaker of the
7094 House of Delegates and the Legislative Oversight Commission on Education
7095 Accountability detailing implementation of the research endowments at each
7096 participating institution, the amount of qualified donations received by each participating
7097 institution in the preceding fiscal year, the amount of any distributions made from the
7098 trust fund and a description of the research and outcomes supported by those moneys.

7099 116. West Virginia Code §18B-18B-1 is hereby amended as follows:

7100 **§18B-18B-1. Science and Research Council established; purposes.**

7101 (a) The Science and Research Council is hereby established. For the purposes of this
7102 article only, "council" means the Science and Research Council established herein.

7103 (b) The purposes of the council include, but are not limited to, the following:

7104 (1) Increasing the capacity of the state and state institutions of higher education to
7105 attract, implement and use cutting-edge, competitive research funds and infrastructure;

7106 (2) Providing expertise and policy guidance in science and research to the state, its

7107 agencies and state institutions of higher education regarding federal programs such as
7108 the Experimental Program to Stimulate Competitive Research ("EPSCoR") and similar
7109 state programs such as the West Virginia Research Trust Fund established in article
7110 eighteen-a of this chapter and the Research Challenge Fund established in section
7111 twelve, article one-b of this chapter;

7112 (3) Encouraging research collaboration among public and private institutions of higher
7113 education and the private sector, both within and outside the state;

7114 (4) Promoting education at all levels in the fields of science, technology, engineering and
7115 mathematics; and

7116 (5) Providing recommendations to ~~the Commission~~ and state policymakers, including the
7117 Governor and Legislature, regarding science and research initiatives and effective
7118 programmatic activities, budgets and investments to implement those initiatives.

7119 (c) The council replaces the EPSCoR State Advisory Council and consists of ~~fifteen~~
7120 _____ members as follows: **[TO BE DETERMINED]**

7121 ~~(1) The vice presidents in charge of research at Marshall University and West Virginia~~
7122 ~~University;~~

7123 ~~(2) A representative of health sciences at Marshall University and a representative of~~
7124 ~~health sciences at West Virginia University, appointed by the deans of the respective~~
7125 ~~schools of medicine;~~

7126 ~~(3) The Secretary of Education and the Arts or designee;~~

7127 ~~(4) The State Superintendent of Schools or designee;~~

7128 ~~(5) The Secretary of Commerce or designee;~~

7129 ~~(6) The Vice Chancellor for Science and Research of the Commission;~~

7130 ~~(7_6) The Chancellor of the Commission director of OPE who chairs the council;~~

7131 ~~(8_&) One member engaged in applied research at Marshall University and one member~~
7132 ~~engaged in applied research at West Virginia University, appointed by the provosts of~~
7133 ~~the respective universities; and~~

7134 ~~(9_8) Four members, appointed by the Governor, who have demonstrated interest,~~
7135 ~~knowledge, skill and experience in academic research and scientific innovation and who~~
7136 ~~possess recognized credentials and expertise in one or more of the following areas:~~

7137 ~~(A) Science, technology, engineering or mathematics ("STEM") fields;~~

7138 ~~(B) Cyberinfrastructure, information technology or computer science;~~

7139 ~~(C) Research and development;~~

7140 ~~(D) Technology based economic development or industry; or~~

7141 ~~(E) Undergraduate research or science education.~~

7142 ~~At least two of the members appointed by the Governor shall be representatives of~~
7143 ~~business or industry.~~

7144 ~~(d) Of the initial appointments made by the Governor, one member shall be appointed to~~
7145 ~~a one-year term; one member shall be appointed to a two-year term; one member shall~~
7146 ~~be appointed to a three-year term; and one member shall be appointed to a four-year~~
7147 ~~term. Of the initial appointments made by the deans of schools of medicine, the member~~
7148 ~~appointed by the dean of the Marshall University School of Medicine shall be appointed~~
7149 ~~to a two-year term, and the member appointed by the dean of the West Virginia~~

7150 ~~University School of Medicine shall be appointed to a three-year term. Of the initial~~
7151 ~~appointments made by the provosts, the member appointed by the West Virginia~~
7152 ~~University provost shall be appointed to a two-year term, and the member appointed by~~
7153 ~~the Marshall University provost shall be appointed to a four-year term.~~

7154 ~~(e) After the initial appointments, all members serve terms of four years. Each appointed~~
7155 ~~member who qualifies under the provisions of this section may serve for no more than~~
7156 ~~two successive terms. An appointment to fill a vacancy on the council or reappointment~~
7157 ~~of a member who is eligible to serve an additional term is made in accordance with the~~
7158 ~~provisions of this section.~~

7159 (~~f~~d) Members of the council serve without compensation, but are entitled to
7160 reimbursement by the ~~commission~~ council for expenses, including travel expenses,
7161 actually incurred by the member in the official conduct of the business of the council.

7162 117. West Virginia Code §18B-18B-2 is hereby amended as follows:

7163 **§18B-18B-2. Strategic plan; reports.**

7164 (a) The council shall develop a strategic state plan for science and technology research
7165 that establishes a collaborative process to engage all scientific research resources, both
7166 public and private, in a comprehensive, strategic network. The council's strategic state
7167 plan serves as the state plan for science and technology research.

7168 (b) At a minimum, the strategic plan shall address science and technology research
7169 resources and their relation to the following areas of research:

7170 (1) Human and physical infrastructure;

7171 (2) Policy development;

7172 (3) Education and outreach;

7173 (4) Research innovation; and

7174 (5) Economic development.

7175 (c) Periodically, the council shall reassess the strategic state plan and update it as
7176 needed. ~~Any new or updated strategic state plan shall be approved by the commission~~
7177 ~~prior to becoming effective.~~

7178 (d) The EPSCoR Advisory Council's current "Vision 2015: The West Virginia Science
7179 and Technology Strategic Plan" serves as the state plan for science and technology
7180 research until a plan is approved by the council.

7181 (e) The council shall report to the Legislative Oversight Commission on Education
7182 Accountability by July 1, 2010, and annually thereafter, on progress in implementing the
7183 strategic state plan, as well as any updates to the plan.

7184 118. A new section of West Virginia Code §18B-18B is created as follows:

7185 **§18B-18B-3. Legislative findings and purpose.**

7186 (a) The Legislature finds that economic development in West Virginia depends in part on
7187 collaborations developed between higher education and businesses and industry,
7188 particularly in the advancement of new and emerging technologies. It is in the best
7189 interests of the citizens of the state to implement programs which promote this research
7190 and contribute to the general economic welfare.

7191 (b) The Legislature further finds that the transfer of property previously owned by the
7192 Higher Education Policy Commission to the council described in section eighteen B,
7193 article one will further the work of the West Virginia Education, Research and

7194 Technology Park and create a new and unprecedented opportunity to promote research
7195 and development in the state. An efficiently managed Technology Park will encourage
7196 private sector participation in and support for research and economic development and
7197 will facilitate collaboration among the private sector, the council, the doctoral institutions,
7198 and their research corporations.

7199 (c) It is the responsibility of the council to ensure that the day to day operations of the
7200 Technology Park are carried out effectively and efficiently in order to provide the greatest
7201 investment return to the people of West Virginia. To this end the Legislature finds that a
7202 mechanism is needed to simplify and expedite property management and purchasing of
7203 equipment, material and personal services.

7204 (d) Therefore, the purpose of this article is to provide the council with the authority
7205 necessary to carry out its responsibilities related to the operation of the Technology
7206 Park. The council is authorized to enter into agreements and other contractual
7207 relationships with any affiliated corporation in order to achieve maximum efficiency in
7208 managing the Technology Park.

7209 119. A new section of West Virginia Code §18B-18B is created as follows:

7210 **§18B-18B-4. Definitions.**

7211 The following words used in this article have the meanings ascribed to them in this
7212 section unless the context clearly indicates a different meaning:

7213 (a) "Affiliated corporation" or "corporation" means a corporation which meets the
7214 essential criteria prescribed in section five of this article and whose purpose is to provide
7215 management services to the council in carrying out the day to day operations of the
7216 Technology Park;

7217 (b) "Agreement" means an agreement or contractual relationship entered into between
7218 the council and an affiliated corporation pursuant to the provisions of this article;

7219 (c) "Board of directors" means the governing body of a corporation created pursuant to
7220 section three of this article;

7221 (d) "Doctoral institution" means Marshall University or West Virginia University;

7222 (e) "Executive director" means the chief executive officer of an affiliated corporation
7223 employed pursuant to section five of this article;

7224 (f) "Potential membership" means the total number of members who comprise the board
7225 of directors when all membership seats are filled;

7226 (g) "Private sector member" means a director of an affiliated corporation who is not an
7227 employee of the OPE, any state institution of higher education, nor of any entity bearing
7228 a direct or indirect relationship to the OPE;

7229 (h) "Research corporation" means a corporation established with respect to Marshall
7230 University or West Virginia University pursuant to section three, article twelve of this
7231 chapter; and

7232 (i) "Technology Park" means the state-owned West Virginia Education, Research and
7233 Technology Park affiliated with the council.

7234 120. A new section of West Virginia Code §18B-18B is created as follows:

7235 **§18B-18B-5. Council authorized to contract with corporation; corporation to meet**
7236 **essential criteria; corporation membership and organization; financial**
7237 **requirements.**

7238 (a) The council is authorized to enter into agreements and any other contractual
7239 relationships with an affiliated corporation formed as set forth in this article.

7240 (b) The affiliated corporation shall meet the following essential criteria:

7241 (1) Corporation status. -- The corporation is organized as a non-profit, non-stock
7242 corporation under the general corporation laws of the state exclusively for charitable,
7243 educational or scientific purposes within the meaning of section 501(c) of the Internal
7244 Revenue Code of 1986, as amended.

7245 (2) Corporation membership, meetings, officers. --

7246 (A) Members of the board of directors of the affiliated corporation serve terms as
7247 prescribed in the bylaws of the corporation and are selected by the OPE. The OPE shall
7248 make all appointments to the board of directors by majority vote of its members and shall
7249 include the individual votes as a part of the minute record.

7250 (B) Private sector members shall constitute a majority of the potential membership of the
7251 board of directors. Vacancies shall be filled in such a way that the majority status of
7252 private sector membership is maintained.

7253 (C) At least biennially, the board of directors shall elect a chair from among its members.

7254 121. A new section of West Virginia Code §18B-18B is created as follows:

7255 **§18B-18B-6. Powers and duties of board of directors and corporation.**

7256 (a) The primary responsibility of the corporation is to manage the day-to-day operations
7257 of the technology park through collaboration agreements with the council. To that end,
7258 the board of directors has the following powers and duties:

- 7259 (1) To employ an executive director subject to the provisions of section five of this article;
- 7260 (2) To approve employment of other staff recommended by the executive director as
7261 being necessary and appropriate to carry out the purposes of this article and subject to
7262 agreements with the council;
- 7263 (3) To serve as fiscal agent and provide additional services, including, but not limited to,
7264 property management, human resources management and purchasing;
- 7265 (4) To meet as a governing body. A corporation created under this article is exempt from
7266 the provisions of section three, article nine-a, chapter six of this code and from the
7267 provisions of article one, chapter twenty-nine-b of this code;
- 7268 (5) To receive, purchase, hold, lease, use, sell and dispose of real and personal property
7269 of all classes, subject to the provisions of subdivision (8) of this subsection and section
7270 eight of this article;
- 7271 (6) To receive from any source whatsoever grants to be expended in accomplishing the
7272 objectives of this article;
- 7273 (7) To receive from any source whatsoever aid or contributions of money, property or
7274 other things of value to be held, used and applied only for the purposes for which the aid
7275 or contributions may be made;
- 7276 (8) To accept and expend any gift, grant, contribution, bequest, endowment or other
7277 money for the purposes of this article. Any transfer of endowment or other assets by the
7278 OPE to the corporation or by the corporation to the OPE for management shall be
7279 formalized in a memorandum of agreement to assure, at a minimum, that any
7280 restrictions governing the future disposition of funds are preserved. The council may not
7281 transfer ownership of the technology park property to the corporation;

7282 (9) To make, amend and repeal bylaws, rules and its governing documents consistent
7283 with the provisions of this article to effectuate the purpose and scope of the corporation;

7284 (10) To alter the purpose or scope of the corporation; and

7285 (11) To delegate the exercise of any of its powers except for the power to approve
7286 budgets to the executive director, subject to the directions and limitations contained in its
7287 governing documents.

7288 (b) In addition to the powers and duties provided for in this section and any other powers
7289 and duties that may be assigned to it by law or agreement, the corporation has other
7290 powers and duties necessary to accomplish the objectives of this article or as provided
7291 by law.

7292 122. A new section of West Virginia Code §18B-18B is created as follows:

7293 **§18B-18B-7. Appointment of executive director; qualifications.**

7294 (a) The council shall set the qualifications for the position of executive director and shall
7295 conduct a thorough search for qualified candidates. A qualified candidate is one who
7296 meets at least the following criteria:

7297 (1) Possesses a broad understanding of the relationship between public and private
7298 sector research and the need for cooperation and collaboration among the corporation
7299 and the research corporations;

7300 (2) Holds at least a bachelor's degree in a field related to the duties and responsibilities
7301 of the position of executive director;

7302 (3) Demonstrates strong communication skills and the ability to work with all types of
7303 businesses and industry, government agencies and higher education institutions; and

7304 (4) Possesses other skills, qualifications or attributes as the corporation considers
7305 appropriate or desirable.

7306 (b) The council shall select the executive director for the corporation. The executive
7307 director may have a dual appointment with the council, but may not be a corporation
7308 director.

7309 (1) The corporation's board of directors shall appoint the executive director by majority
7310 vote of its members and shall include the vote as a part of the minute record.

7311 (2) The executive director shall inform the board of directors and the council annually of
7312 his or her employment status with any other institution, agency or organization.

7313 (c) The day to day operations of the corporation are under the control and supervision of
7314 the executive director. With the approval of the board of directors the executive director
7315 may employ staff as necessary to carry out the corporation's purposes as set forth in this
7316 article.

7317 123. A new section of West Virginia Code §18B-18B is created as follows:

7318 **§18B-18B-8. Agreements; required provisions.**

7319 (a) The council may enter into agreements or other contractual relationships with a
7320 corporation that meets the conditions set forth in section five of this article. Any
7321 agreement shall specify that the corporation is accountable to the council for the efficient
7322 operations of the Technology Park.

7323 (b) On the effective date of the agreement, the corporation becomes the fiscal agent for
7324 operations of the Technology Park on behalf of the council pursuant to terms of the
7325 agreement.

7326 (c) If an agreement is terminated, the funds, contributions or grants paid or held by the
7327 corporation and not encumbered or committed prior to termination shall be distributed as
7328 provided for in the agreement.

7329 (d) If made part of the agreement, the corporation may use services of both corporation
7330 employees and personnel of the council. The corporation may pay the costs incurred by
7331 the council, including personnel funded on grants and contracts, fringe benefits of
7332 personnel funded on grants and contracts, administrative support costs and other costs
7333 which may require reimbursement. The corporation may include as costs any applicable
7334 overhead and fringe benefit assessments necessary to recover the costs expended by
7335 the council, pursuant to the terms of the agreement, and the council may be reimbursed
7336 for expenses incurred by it pursuant to the agreement.

7337 124. A new section of West Virginia Code §18B-18B is created as follows:

7338 **§18B-18B-9. Audits required; financial reports; conflicts of interest.**

7339 (a) The financial statements of the corporation shall be audited annually by an
7340 independent certified public accountant or firm. Within thirty days of completion, the
7341 financial audit report shall be presented to the corporation's board of directors for
7342 approval, after which a copy of the financial audit and required statements shall be
7343 submitted to the council.

7344 (b) Notwithstanding any other provision of this code to the contrary, any officer or
7345 employee of the OPE, who is not the executive director of the corporation, may hold an
7346 appointment as a member and as an officer of the corporation board of directors.

7347 125. A new section of West Virginia Code §18B-18B is created as follows:

7348 **§18B-18B-10. No waiver of sovereign immunity; not obligation of the state.**

7349 (a) Nothing contained in this article waives or abrogates in any way the sovereign
7350 immunity of the state or deprives the council or any officer or employee of the council of
7351 sovereign immunity.

7352 (b) Obligations of the board of directors or the corporation do not constitute debts or
7353 obligations of the council or the state.

7354 126. A new section of West Virginia Code §18B-18B is created as follows:

7355 **§18B-18B-11. Legislative findings and intent; memorandum of agreement**
7356 **required; terms and conditions; reports.**

7357 (a) The Legislature finds that the Technology Park is a diversified, multi-tenant research,
7358 development and commercialization park focused on energy, chemicals and other
7359 sciences and technologies for the advancement of education and economic
7360 development in West Virginia. The areas of primary research and development include
7361 energy, chemicals and materials, and biotechnology. It is the intent of the Legislature to
7362 provide the council with the tools needed to manage the Technology Park and facilitate
7363 the translation of state investment dollars in higher education and research into business
7364 and economic growth that will provide tangible benefits for the citizens of the state.

7365 (b) To achieve the goals set forth in this section, it is essential that the council include in
7366 its research and development efforts the talents and expertise available at the doctoral
7367 institutions and their research corporations. Therefore, by July 1, 2019, the council shall
7368 enter into a memorandum of agreement with the research corporations to delineate the
7369 role each party will play in furthering the goals of research and economic development
7370 as set forth in this article. The agreement shall focus on collaboration and cooperation
7371 among the council and the two research corporations.

7372 (1) The agreement is not effective until all parties have agreed to the included terms and
7373 conditions.

7374 (2) The council shall file a report, including a copy of the completed agreement and any
7375 relevant documents, with the Joint Committee on Government and Finance and the
7376 Legislative Oversight Commission on Education Accountability by July 15, 2019.

7377 (3) The agreement may be amended by mutual consent of the parties. Within fifteen
7378 days of the date a new agreement is signed, the council shall file a report as provided in
7379 subdivision (2) of this subsection.

7380 127. A new section of West Virginia Code §18B-18B is created as follows:

7381 **§18B-18B-12. Research challenge.**

7382 (a) There is established in the State Treasury a special revenue fund known as the
7383 "research challenge fund." Moneys deposited in this fund shall be administered by the
7384 OPE.

7385 (b) The objectives of the research challenge are to:

7386 (1) Increase the research capacity of institutions of higher education and the
7387 competitiveness of these institutions to apply for external funding;

7388 (2) Stimulate the development of research and research products that are directly
7389 applicable in improving the economic competitiveness of existing West Virginia
7390 industries and the development of new business and jobs in the state;

7391 (3) Leverage limited state resources with private and federal funds to support projects
7392 and activities directly related to economic development by requiring matching funds and
7393 cooperative agreements with external partners;

7394 (4) Increase the production of undergraduate and graduate students of programs in the
7395 sciences, technology, engineering and mathematics, with special attention to emerging
7396 disciplines such as biometrics; and

7397 (5) Hold institutions more accountable for the success of research projects funded under
7398 this program with the expectation that state support will be phased out and the project or
7399 activity will be terminated if it is unable to generate ongoing external support.

7400 (c) The commission shall develop criteria for awarding grants to institutions under this
7401 account.

7402 (d) The council shall report to the Legislative Oversight committee on educational
7403 accountability annually on the results of the projects and activities funded by the
7404 research challenge appropriation.

7405 128. West Virginia Code §18B-19-1 is hereby amended as follows:

7406 **§18B-19-1. Legislative findings and intent.**

7407 (a) The Legislature makes the following findings:

7408 (1) State institutions of higher education vary widely in the conditions of their facilities
7409 infrastructure.

7410 (2) State institutions of higher education vary widely in their ability to incur debt for
7411 capital improvements. It is nearly impossible for community and technical colleges and
7412 some smaller baccalaureate institutions to fund significant capital improvements in the
7413 absence of state funding.

7414 (3) A student enrolled at a community and technical college that previously was
7415 administratively linked to another state institution of higher education pays substantially

7416 higher tuition and mandatory fees than a student enrolled at a freestanding community
7417 and technical college. This cost discrepancy is due in large part to the significantly
7418 higher capital fees charged to these students to pay debt service for capital
7419 improvements.

7420 (4) The substantial amount of capital fees that students must pay at the institution level
7421 contributes significantly to the poor grade the state receives in the category of
7422 “Affordability” in Measuring Up: The National Report Card on Higher Education.

7423 (5) It is beneficial for the state to provide additional ongoing capital funding to reduce the
7424 obligation of students and parents to bear the cost of higher education capital
7425 improvements and facilities maintenance.

7426 (6) West Virginia is one of only a few states that does not address higher education
7427 capital improvements and facilities maintenance needs through a statewide plan.

7428 (7) State funding for capital improvements should align with state and system higher
7429 education goals, objectives and priorities as set forth in article one-d of this chapter.

7430 (8) State capital funding should focus primarily on educational and general capital
7431 improvements, not auxiliary capital improvements.

7432 (9) Renovations of existing buildings sometimes deserve greater consideration for state
7433 funding than new construction. However, new construction may deserve greater
7434 consideration than renovation when a state or system goal, objective or priority is
7435 implicated, as well as when renovation would be financially inefficient.

7436 (10) As the Legislature increases funding for new educational and general capital
7437 improvements and major renovations, and supplants existing educational and general
7438 debt, institutions should target funds for maintenance and deferred maintenance needs.

7439 (11) If community and technical colleges are to keep the cost of education affordable,
7440 they cannot be expected to fund maintenance obligations entirely from student capital
7441 fees.

7442 (12) The ~~commission~~ OPE and council should scrutinize carefully all requests from
7443 institutions to incur additional debt in order to determine their effect on institution debt
7444 capacity and the impact that incurring additional debt will have on students.

7445 (13) State institutions of higher education ultimately should target adequate state capital
7446 contributions and capital fees to address maintenance and deferred maintenance needs.

7447 (14) Until institutions are able to generate sufficient revenue to address maintenance
7448 and deferred maintenance needs, the Legislature should provide periodic funding to
7449 assist institutions in addressing these needs. Funding priority should be given to projects
7450 that address building code requirements and critical maintenance needs.

7451 (15) In supporting future high priority capital needs, the Legislature, ~~commission and~~
7452 ~~council~~ should not reward institutions with state funding if they neglect to address
7453 facilities maintenance needs or do not prudently manage their capital resources.

7454 (16) Once an institution's capital development plan has been approved by the governing
7455 board and ~~confirmed by the commission or~~ approved by the council, as appropriate,
7456 project priorities should not change significantly from year to year.

7457 (17) ~~Commission and council~~ Council staff should participate in managing capital
7458 projects at smaller ~~institutions~~ community and technical colleges if the smaller ~~institution~~
7459 community and technical college lacks the expertise necessary to plan, design and
7460 complete projects at or under budget.

7461 (b) The intent of the Legislature relating to this article includes, but is not limited to, the

7462 following:

7463 (1) Dedicated state funding sources shall be designated to finance construction and
7464 renovation of educational and general facilities at state institutions of higher education
7465 from time to time;

7466 (2) Capital project lists submitted by institutions ~~to the commission or council, as~~
7467 ~~appropriate, and capital project lists submitted by the commission and council~~ to the
7468 state budget office, Legislative Oversight Commission on Education Accountability, and
7469 Joint Committee on Government and Finance for consideration for state funding shall be
7470 reasonable requests that align with state and system goals, objectives and priorities and
7471 ones which reasonably could be funded if approved;

7472 (3) As the Legislature increases its responsibility for financing new educational and
7473 general facilities and major renovations, ~~the commission, council and~~ institutions shall
7474 ensure that sufficient capital revenues are available for maintenance and that the
7475 facilities are maintained adequately;

7476 (4) Ongoing state funding shall be dedicated to supplement capital fees available for
7477 maintenance at community and technical colleges; and

7478 (5) Once a system capital plan is in place, institutions shall set aside adequate funding
7479 annually to ensure that ongoing facilities maintenance needs are met.

7480 129. West Virginia Code §18B-19-2 is hereby amended as follows:

7481 **§18B-19-2. Definitions.**

7482 As used in this article, the following terms have the meanings ascribed to them.

7483 (a) "ADA" means the Americans with Disabilities Act of 1990, 42 U.S.C. §12101, et seq.

7484 (b) "Auxiliary enterprise" means an entity that exists to furnish goods or services to
7485 students, faculty, staff or others; charges a fee directly related to, although not
7486 necessarily equal to, the cost of the goods or services; and is managed as essentially
7487 self-supporting.

7488 (c) "Auxiliary facility" means a building or structure that is used for an auxiliary enterprise
7489 including, but not limited to, residence halls, food services, parking, intercollegiate
7490 athletics, faculty and staff housing, student unions, bookstores and other service
7491 centers.

7492 (d) "Auxiliary fees" means funds derived from, but not limited to, the following sources:

7493 (1) Parking fees received from any source;

7494 (2) Revenues received from athletic events, including ticket sales, television revenues
7495 and skybox fees;

7496 (3) Bookstore revenues;

7497 (4) Student union vendor and user fees;

7498 (5) Donations or grants from any external source;

7499 (6) Facility rental fees; and

7500 (7) Fees assessed to students to support auxiliary enterprises.

7501 (e) "Capital planning" means a purposeful activity that focuses attention on long term
7502 physical plant objectives which should be accomplished in a logical sequence over time
7503 as opportunities arise and resources become available.

7504 (f) "Capital project management" means planning, designing, bidding and providing

7505 construction administration and oversight of architectural, engineering and construction
7506 contracts and projects.

7507 (g) "Deferred maintenance" means repair, maintenance and renewal of capital facilities
7508 which should be part of normal maintenance management, but which have been
7509 postponed to a future budget cycle or until funds become available.

7510 (h) "Educational and general capital fees" means the fees collected from students to pay
7511 debt service for capital improvement bonds issued in the past by the Higher Education
7512 Policy Commission or in the future by the ~~commission~~ OPE and or by governing boards
7513 for educational and general facilities, for the maintenance of those facilities and to fund
7514 capital improvements in those facilities on a cash basis.

7515 (i) "Educational and general facility" means a building or structure used for instruction
7516 and instructional support purposes, and includes classroom, laboratory, library,
7517 computer laboratory, faculty and administrative office and other academic support
7518 spaces.

7519 (j) "Extraordinary circumstance" or "extraordinary circumstances" means, a situation
7520 involving life-safety issues, issues that would result in extensive damage to a facility if
7521 not addressed immediately, any unforeseen opportunity to use external funds and any
7522 other situation the ~~commission~~ OPE or council determines should warrant special
7523 consideration.

7524 (k) "Life-safety" means a condition existing on a campus that, if not corrected
7525 immediately, would jeopardize the safety and property of students, faculty, staff and the
7526 visiting public.

7527 (l) "Maintenance" means the work necessary within a budget cycle to realize the

7528 originally anticipated life of a fixed asset, including buildings, fixed equipment and
7529 infrastructure.

7530 (m) "Governing board", and "state institution of higher education" ~~and "institution under~~
7531 ~~the jurisdiction of the commission"~~ means all state institutions of higher education
7532 including Marshall University and West Virginia University and their respective governing
7533 boards.

7534 130. West Virginia Code §18B-19-3 is hereby amended as follows:

7535 **§18B-19-3. System capital development planning.**

7536 (a) ~~By December 31, 2017, the commission and council, jointly or separately, shall~~
7537 ~~develop a~~

7538 The system capital development oversight policy for approval was approved by the
7539 Legislative Oversight Commission on Education Accountability. ~~At a minimum the initial~~
7540 The oversight policy shall from the effective date of this section, be limited in application
7541 to only those portions which are specifically applicable to community and technical
7542 colleges. In the future, the oversight policy shall be limited only to community and
7543 technical colleges and shall continue to include the following:

7544 (1) System goals for capital development;

7545 (2) An explanation of how system capital development goals align with state goals,
7546 objectives and priorities established in articles one and one-d of this chapter and with
7547 system master plans;

7548 (3) A description of how the ~~commission and~~ council will prioritize their recommendations
7549 for capital projects for state funding based on their ability to further state goals,

7550 objectives and priorities and system capital development goals;

7551 (4) A building renewal formula to calculate a dollar benchmark that shall be collected
7552 annually and invested in facilities to minimize deferred maintenance and to provide the
7553 ~~commission and~~ council objective information to determine if the investments in
7554 maintenance are occurring;

7555 (5) A process for governing boards at community and technical colleges to follow in
7556 developing and submitting campus development plans to the ~~commission or council, as~~
7557 ~~appropriate, for approval by the council or for confirmation by the commission, as~~
7558 ~~appropriate~~; and

7559 (6) A process for community and technical college governing boards to follow to ensure
7560 that sufficient revenue is generated for and applied toward facilities maintenance.

7561 (b) The system capital development plan shall be developed in consultation with
7562 governing boards and appropriate ~~institution~~ community and technical college staff.
7563 Before approving the capital development plan, the ~~commission and~~ council shall afford
7564 interested parties an opportunity to comment on the plan through a notice-and-comment
7565 period of at least thirty days.

7566 (c) The ~~commission and~~ council shall update its system capital development plan at
7567 least once in each ten-year period.

7568 131. West Virginia Code §18B-19-4 is hereby amended as follows:

7569 **§18B-19-4. Campus development plans.**

7570 (a) Each community and technical college governing board shall update its current
7571 campus development plan and submit the updated plan to the ~~commission or council, as~~

7572 ~~appropriate, for approval by the council or confirmation by the commission, as~~
7573 ~~appropriate, except that confirmation is not required by the commission for the exempted~~
7574 ~~schools.~~ A campus development plan shall be adopted by each community and technical
7575 college governing board for a ten-year period and shall align with criteria specified in the
7576 following sources:

7577 (1) The system capital development oversight policy;

7578 (2) The institution's approved master plan and compact; and

7579 (3) The current campus development plan objectives.

7580 (b) Campus development plans are intended to be aspirational; however, an institution's
7581 plan shall be appropriate to its size, mission, and enrollment and to the fiscal constraints
7582 within which the institution operates. At a minimum the campus development plan shall
7583 include the following:

7584 (1) The governing board's development strategy;

7585 (2) An assessment of the general condition and suitability of buildings and facilities,
7586 including deferred maintenance, life-safety and building code issues, ADA requirements
7587 and energy efficiency;

7588 (3) An assessment of the impact of projected enrollment and demographic changes on
7589 building and facility needs;

7590 (4) A comprehensive list of major deferred maintenance projects, individually exceeding
7591 \$75,000 in cost, that need to be addressed for each campus by building or facility
7592 including an estimated cost for each;

7593 (5) An analysis as to all buildings and facilities as to the need for renovations, additions,

- 7594 demolition or any combination thereof;
- 7595 (6) A list of major site improvements that are needed, including vehicular and pedestrian
7596 circulation, parking and landscaping;
- 7597 (7) An analysis of telecommunications, utilities and other infrastructure improvements
7598 that are needed;
- 7599 (8) A delineation of clear property acquisition boundaries that are reasonably appropriate
7600 for campus expansion;
- 7601 (9) A list of proposed new facilities and building sites;
- 7602 (10) A list of capital projects in priority order;
- 7603 (11) Estimates of the timing, phasing and projected costs associated with individual
7604 projects;
- 7605 (12) If an institution has multiple campuses in close proximity, a delineation of how the
7606 campuses should interact and support each other to minimize duplication of facilities,
7607 improve efficiency and be aesthetically compatible;
- 7608 (13) A statement of the impact of the plan upon the local community and the input
7609 afforded local and regional government entities and the public with respect to its
7610 implementation; and
- 7611 (14) Any other requirement established by the ~~commission~~ and council in the rules
7612 required by section seventeen of this article.
- 7613 (c) Campus development plans shall incorporate all current and proposed facilities,
7614 including educational and general and auxiliary facilities.

7615 (d) Not later than the next regularly scheduled meeting of the ~~commission or council, as~~
7616 ~~applicable,~~ following the fifth anniversary date after the ~~commission confirms or council~~
7617 approves, as appropriate, the development plan of a governing board the governing
7618 board shall report on the progress made in the first five years to implement the campus
7619 development plan for each campus under its jurisdiction. In addition, the governing
7620 board shall report on its plans to implement the remaining five-year period of its campus
7621 development plan.

7622 (e) Each community college governing board shall update its campus development plan
7623 at least once during each ten-year period and any update is subject to the ~~confirmation~~
7624 ~~of the commission or approved~~ approval by the council, ~~as appropriate.~~

7625 (f) Except for the governing boards of the exempted schools, a governing board may not
7626 implement a campus development plan or plan update that has not been ~~confirmed by~~
7627 ~~the commission or approved by the council, as appropriate.~~

7628 132. West Virginia Code §18B-19-5 is hereby amended as follows:

7629 **§18B-19-5. Capital appropriation requests.**

7630 (a) The ~~commission~~ governing boards of all state institutions of higher education, other
7631 than community and technical colleges, and the council each shall submit a prioritized
7632 capital appropriation request annually to the state budget office as required by article
7633 two, chapter eleven-b of this code consisting of major capital projects and maintenance
7634 projects.

7635 (b) The ~~commission~~ governing boards of all state institutions of higher education, other
7636 than community and technical colleges, and the council each shall develop a process
7637 for governing boards to follow in submitting a list of major educational and general

7638 capital projects so that a prioritized major capital project list, prepared by the ~~commission~~
7639 ~~or council, as appropriate~~ commission governing boards of all state institutions of higher
7640 education, other than community and technical colleges, and the council may be
7641 submitted to the state budget office by the applicable deadline.

7642 (1) ~~The~~ Each governing board's major capital project list shall include the following
7643 items:

7644 (A) Projects identified in the governing board's campus development plan or plans. A
7645 project on any community or technical college campus may not be included which is not
7646 contained in the plan ~~confirmed by the commission or~~ approved by the council, as
7647 ~~appropriate~~, except when extraordinary circumstances otherwise warrant;

7648 (B) A current estimate of each project's estimated cost accounting for inflation since
7649 completion of the campus development plan. The size and scope of ~~the~~ a project on any
7650 community or technical college campus may not change unless the campus
7651 development plan has been updated and approved by the council ~~or confirmed by the~~
7652 ~~commission, as appropriate~~, as provided in section three of this article; and

7653 (C) Any additional information required to be provided by the ~~commission~~, council or
7654 state budget office.

7655 (2) The ~~commission and~~ council each shall rank the major capital projects submitted by
7656 the governing boards on any community or technical college campus according to
7657 priority consistent with the criteria outlined in the system capital development plan. The
7658 council ~~and commission~~ may not submit to the state budget office a request for an
7659 institution which the ~~commission or~~ council determines reasonably could not secure
7660 funding through the appropriation process during the following fiscal year.

7661 (c) The ~~commission and~~ council each shall develop a process for governing boards on
7662 any community or technical college campus to follow in submitting a list of major
7663 maintenance projects so that a prioritized maintenance project list, prepared by the
7664 ~~commission or~~ council, as appropriate, may be submitted to the state budget office by
7665 the applicable deadline.

7666 (1) Annually, the ~~commission and~~ council, as appropriate, shall provide each governing
7667 board on any community or technical college campus a recommended building renewal
7668 calculation that identifies the funds that should be collected and invested in its buildings
7669 and facilities during the next fiscal year to maintain them and minimize deferred
7670 maintenance.

7671 (2) As soon as it receives the building renewal calculation, each governing board on
7672 each community or technical college campus shall make realistic revenue estimates of
7673 the funds available for maintenance projects from educational and general capital fees,
7674 from auxiliary and auxiliary capital fees and from any other revenue that may be used for
7675 maintenance projects, as well as any anticipated reserves. The governing boards on
7676 each community or technical college campus then shall identify and submit proposed
7677 major maintenance projects, consistent with its campus development plan or plans, to be
7678 funded from these revenues.

7679 (3) The ~~commission and~~ council each shall report to the Legislative Oversight
7680 Commission on Education Accountability on the revenue available to governing boards
7681 on each community or technical college campus for educational and general and
7682 auxiliary maintenance projects, as well as any shortfalls based on building renewal
7683 formula calculation, and major maintenance projects that institutions propose to
7684 undertake during the upcoming fiscal year.

7685 ~~(4) The commission shall work with institutions under its jurisdiction to ensure that~~
7686 ~~adequate funds are generated to fund maintenance and build adequate reserves from~~
7687 ~~educational and general and auxiliary capital fees and other revenue consistent with the~~
7688 ~~building renewal formula. The Legislature recognizes that it may take several years for~~
7689 ~~this to be accomplished fully.~~

7690 ~~(5)~~ The council shall work with the Legislature and institutions under its jurisdiction to
7691 ensure that a combination of appropriated and nonappropriated revenue is available to
7692 fund maintenance and build adequate reserves at community and technical colleges
7693 consistent with the building renewal formula.

7694 133. West Virginia Code §18B-19-6 is hereby amended as follows:

7695 **§18B-19-6. Capital project financing.**

7696 (a) ~~The commission and governing boards~~ of all state institutions of higher education,
7697 other than community and technical colleges, jointly or singly, may issue revenue bonds
7698 for capital project financing in accordance with section eight, article ten of this chapter.

7699 ~~(b) A governing board may seek funding for and initiate construction or renovation work~~
7700 ~~for major projects only if contained in a campus development plan approved by the~~
7701 ~~council or confirmed by the Commission: Provided, That this subsection (b) shall not~~
7702 ~~apply to the governing boards of the exempted schools.~~

7703 ~~(c)~~ A governing board at any state institution of higher education, other than community
7704 and technical colleges, may fund capital improvements on a cash basis, through bonding
7705 or through notes or another financing method ~~that is approved by the commission and by~~
7706 ~~the council, if appropriate. Provided, That the exempted schools shall not be required to~~
7707 ~~get the approval of the commission.~~

7708 (c) A governing board at any community and technical colleges, may fund capital
7709 improvements on a cash basis, through bonding or through notes or another financing
7710 method that is approved by the ~~commission and by the council, if appropriate.~~

7711 (1) If the cost of an improvement project for any institution under the jurisdiction of the
7712 council, exceeds \$1 million, the governing board first shall obtain the approval of the
7713 council, as appropriate. ~~If the cost of an improvement project at an institution under the~~
7714 ~~jurisdiction of the commission, other than the exempted schools, exceeds \$3 million, the~~
7715 ~~governing board shall first obtain the approval of the commission.~~

7716 (2) Prior to approving bonding or any alternative financing method for any institution
7717 ~~other than the exempted schools, the commission, and~~ community or technical college,
7718 ~~the council if appropriate,~~ shall evaluate the following issues:

7719 (A) The institution's debt capacity and ability to meet the debt service payments for the
7720 full term of the financing;

7721 (B) The institution's capacity to generate revenue sufficient to complete the project;

7722 (C) The institution's ability to fund ongoing operations and maintenance;

7723 (D) The impact of the financing arrangement on students; and

7724 (E) Any other factor considered appropriate.

7725 (d) A governing board shall notify the Joint Committee on Government and Finance at
7726 least thirty days before beginning construction or renovation work on any capital project
7727 in excess of \$1 million.

7728 (e) The ~~commission~~ OPE may pledge all or part of the fees of any or all state institutions
7729 of higher education as part of a system bond issue.

7730 (f) Any fee or revenue source pledged prior to the effective date of this section for
7731 payment of any outstanding debt remains in effect until the debt is fully repaid or
7732 refunded.

7733 134. West Virginia Code §18B-19-7 is hereby amended as follows:

7734 **§18B-19-7. Capital project management.**

7735 (a) The ~~commission~~ OPE, council and governing boards, as responsibility is otherwise
7736 assigned herein, shall ensure that capital funds are spent appropriately and that capital
7737 projects are managed effectively. Project management shall be conducted in all respects
7738 according to sound business practices and applicable laws, and rules.

7739 (b) The ~~commission~~ OPE shall employ a sufficient number of competent facilities staff
7740 experienced in capital project development and management that is suitable for the
7741 number, size and complexity of the capital projects being managed. By December 31,
7742 2011, and continuing thereafter, at least one employee shall be Leadership in Energy
7743 and Environmental Design (LEED) certified.

7744 (c) A governing board under the jurisdiction of the ~~commission~~ OPE is exempt from the
7745 provisions of subsections (e) and (f) of this section seven of this article, and its capital
7746 projects management shall be governed by the provisions of subsection (d) of this
7747 section regardless of the rolling five year construction expenditures, if it meets each of
7748 the following criteria:

7749 (1) Employs at least one Leadership in Energy and Environmental Design (LEED)
7750 certified administrator; and

7751 (2) Employs at least one Certified Facilities Manager (CFM) as credentialed by the
7752 International Facility Management Association or employs at least one Project

- 7753 Management Professional (PMP) as certified by the Project Management Institute.
- 7754 (d) An institution that has entered into construction contracts averaging more than \$50
7755 million over the most recent rolling five-year period is responsible for capital project
7756 management at that institution if it meets the following additional conditions:
- 7757 (1) The governing board shall employ a facilities staff experienced in capital project
7758 development and management that is suitable for the number, size and complexity of
7759 the capital projects being managed and, by December 31, 2011, and continuing
7760 thereafter, at least one of these employees shall be Leadership in Energy and
7761 Environmental Design (LEED) certified;
- 7762 (2) The governing board shall promulgate and adopt a capital project management rule
7763 in accordance with section six, article one of this chapter. The capital project
7764 management rule shall include at least the following items:
- 7765 (A) Delineation of the governing board's responsibilities with respect to capital project
7766 management and the responsibilities delegated to the institution's president;
- 7767 (B) A requirement for the use of standard contract documents for architectural,
7768 engineering, construction, construction management and design-build services as
7769 appropriate to a particular project;
- 7770 (C) The governing board's requirements for the following procedures:
- 7771 (i) Monitoring and approving project designs to ensure conformance with the state and
7772 system goals, objectives and priorities and the governing board's master plan, compact
7773 and campus development plan;
- 7774 (ii) Approving project budgets, including a reasonable contingency reserve for unknown

7775 or unexpected expenses and for bidding;

7776 (iii) Approving architectural, engineering and construction contracts exceeding an
7777 amount to be determined by the governing board;

7778 (iv) Approving contract modifications and construction change orders; and

7779 (v) Providing a method for project closeout and final acceptance of the project by the
7780 governing board.

7781 (3) The institutional capital project management rule shall be filed with the ~~commission~~
7782 OPE no later than one hundred eighty days following the effective date of the rule
7783 required of the ~~commission~~ OPE and council in section seventeen of this article.

7784 (4) The ~~commission~~ OPE may review or audit projects greater than \$5 million
7785 periodically to ascertain that appropriate capital project management practices are being
7786 employed.

7787 (e) For institutions that have entered into construction contracts averaging at least \$20
7788 million, but not more than \$50 million, over the most recent rolling five-year period:

7789 (1) The governing board, with assistance as requested from the ~~commission~~ OPE, shall
7790 manage all capital projects if the governing board meets the following conditions:

7791 (A) Employs at least one individual experienced in capital project development and
7792 management; and

7793 (B) Promulgates and adopts a capital project management rule in accordance with
7794 section six, article one of this chapter that is approved by the ~~commission~~ OPE. The
7795 capital project management rule may be amended at the discretion of the governing
7796 board, but amendments shall be submitted to the ~~commission~~ OPE for review and

- 7797 approval before becoming effective.
- 7798 (2) The capital project management rule of the governing board shall include at least the
7799 following items:
- 7800 (A) Delineation of the governing board's responsibilities with respect to capital project
7801 management and the responsibilities delegated to the institution's president;
- 7802 (B) A requirement for the use of the state's standard contract documents for
7803 architectural, engineering, construction, construction management and design-build
7804 services as appropriate to a particular project; and
- 7805 (C) The governing board's requirements for the following procedures:
- 7806 (i) Monitoring and approving project designs to ensure conformance with the state and
7807 system goals, objectives and priorities and the governing board's master plan, compact
7808 and campus development plan;
- 7809 (ii) Approving project budgets, including a reasonable contingency reserve for unknown
7810 or unexpected expenses and for bidding;
- 7811 (iii) Approving architectural, engineering, construction and other capital contracts
7812 exceeding an amount to be determined by the governing board;
- 7813 (iv) Approving contract modifications and construction change orders; and
- 7814 (v) Providing a method for project closeout and final acceptance of the project by the
7815 governing board.
- 7816 (3) If an institution does not meet the provisions of this subsection, the ~~commission~~ OPE
7817 shall manage all capital projects exceeding \$1 million.

7818 (4) The ~~commission~~ OPE staff shall review and audit periodically all projects greater than
7819 \$1 million to ascertain that appropriate project management practices are being
7820 employed. If serious deficiencies are identified and not addressed sufficiently within
7821 ninety days, ~~commission~~ OPE staff may assume management of all projects.

7822 (f) For institutions that have entered into construction contracts averaging less than \$20
7823 million over the most recent rolling five-year period and for all community and technical
7824 colleges, the ~~commission~~ OPE and council shall manage capital projects exceeding \$1
7825 million. In the rule required by section seventeen of this article, the ~~commission~~ OPE and
7826 council, as appropriate, shall adopt procedures to afford participation by the governing
7827 boards and staff in the planning, development and execution of capital projects.

7828 135. West Virginia Code §18B-19-8 is hereby amended as follows:

7829 **§18B-19-8. Maintenance.**

7830 (a) Each governing board shall ensure that facilities under its jurisdiction are maintained
7831 and that a listing of any major deferred maintenance projects is provided annually to the
7832 ~~commission~~ OPE or council, as appropriate.

7833 (b) Each governing board shall strive to invest annually an amount for maintenance that
7834 is consistent with the building renewal formula developed and approved by the
7835 ~~commission~~ OPE and council and to generate a reserve sufficient to address
7836 unexpected maintenance needs.

7837 (c) The ~~commission~~ OPE and council shall determine whether a governing board is
7838 devoting sufficient resources for maintenance based on the following criteria:

7839 (1) The amount of maintenance expenditures compared to building renewal formula
7840 estimates of appropriate expenditures; and

7841 (2) Periodic evaluations of the conditions of facilities at the institution and its
7842 performance and effectiveness in maintaining its facilities.

7843 136. West Virginia Code §18B-19-9 is hereby amended as follows:

7844 **§18B-19-9. Higher education facilities information system.**

7845 (a) The ~~commission~~ OPE and council jointly shall develop and maintain a higher
7846 education facilities information system, except for the exempt schools. The higher
7847 education facilities information system shall serve as a vehicle for carrying out the
7848 following functions:

7849 (1) Acquisition of statewide data;

7850 (2) Analysis of space use and classification based on nationally recognized standards
7851 and measurements to facilitate comparisons among post-secondary education
7852 institutions within the state and in the region and nation; and

7853 (3) Other purposes as determined by the ~~commission~~ OPE and council consistent with
7854 facilitating policy analysis without burdening or interfering unnecessarily with the
7855 governance responsibilities which are placed upon the governing boards.

7856 (b) At a minimum the higher education facilities information system shall serve the
7857 following purposes:

7858 (1) Develop and maintain a statewide inventory of higher education facilities, including
7859 those acquired by long-term lease, lease-purchase or other arrangement whereby the
7860 institution has long-term beneficial use. The inventory shall include, but is not limited to,
7861 the institution and campus location of the facility, the construction date, the original cost,
7862 square footage, floor plans, type of construction, ownership status, the purposes for

7863 which it is used, the current replacement cost and any other data the ~~commission~~ OPE
7864 and council consider appropriate, consistent with the provisions of the foregoing
7865 subsection (a);

7866 (2) Develop and maintain an inventory of all rooms within each facility, which includes,
7867 but is not limited to, the room number, the square footage, room usage, number of
7868 student stations and any other data the ~~commission~~ OPE and council consider
7869 appropriate, consistent with the provisions of the foregoing subsection (a);

7870 (3) Provide a vehicle for institutions to submit capital appropriation requests to the
7871 ~~commission~~ OPE and council;

7872 (4) Provide information on major institutional capital projects, including major
7873 maintenance and deferred maintenance projects; and

7874 (5) Provide information on facilities needed to calculate the building renewal formula.

7875 (c) The ~~commission~~ OPE and council shall establish benchmarks for classroom and
7876 class laboratory use including an analysis of utilization for the fall and spring semesters
7877 of each academic year. The efficient use of classrooms and class laboratories is a factor
7878 in determining whether an institution needs additional classroom and laboratory facilities.

7879 (d) Each governing board and any institution under its jurisdiction shall participate and
7880 cooperate with the ~~commission~~ OPE and council in all respects in the development and
7881 maintenance of the higher education facilities information system.

7882 (e) The higher education facilities information system may be used for other purposes
7883 set forth by the ~~commission~~ OPE and council in the rules required by section seventeen
7884 of this article, consistent with the provisions of the foregoing subsection (a).

7885 137. West Virginia Code §18B-19-10 is hereby amended as follows:

7886 **§18B-19-10. Authorization to sell and transfer property; use of proceeds.**

7887 (a) Notwithstanding any other provision of law or this code to the contrary, the
7888 ~~commission~~ OPE, council and governing boards each may sell, lease, convey or
7889 otherwise dispose of all or part of any real property that it owns, either by contract or at
7890 public auction, and shall retain the proceeds of the transaction.

7891 The ~~commission~~ OPE, council and governing boards may not sell, convey or otherwise
7892 dispose of any real property without first performing the following steps:

7893 (1) Providing for property appraisal by two independent licensed appraisers. The
7894 property may not be sold for less than the average of the two appraisals;

7895 (2) Providing notice to the public in the county in which the real property is located by a
7896 Class II legal advertisement pursuant to section two, article three, chapter fifty-nine of
7897 this code;

7898 (3) Holding a public hearing on the issue in the county in which the real property is
7899 located;

7900 (4) For real property with a proposed sale price of \$50,000 or greater, ten days prior to
7901 the placement of the Class II legal advertisement, providing written notice to the county
7902 commission and municipalities in the county in which the real estate property is located
7903 and all members of the Legislature, and

7904 (5) In the case of the ~~commission~~ OPE, notifying the Joint Committee on Government
7905 and Finance.

7906 (b) The ~~commission~~ OPE, council or a governing board may not lease real property for

7907 an annual amount of greater than \$50,000 without satisfying the obligations of
7908 subdivisions (2) to (4) of subsection (a) of this section.

7909 (c) The ~~commission~~ OPE, council or a governing board shall deposit the net proceeds
7910 from the sale, conveyance or other disposal of real property into a special revenue
7911 account in the State Treasury to the credit of the ~~commission~~ OPE, council, or governing
7912 board that sold, conveyed or otherwise disposed of the real property.

7913 138. West Virginia Code §18B-19-11 is hereby amended as follows:

7914 **§18B-19-11. Authorization to lease-purchase.**

7915 (a) The ~~commission~~ OPE or council may enter into lease-purchase agreements for
7916 capital improvements, including equipment, on behalf of, or for the benefit of, a state
7917 institution of higher education, the ~~commission~~ OPE or council.

7918 (b) After the ~~commission~~ OPE or council, as appropriate, has granted approval for a
7919 lease-purchase agreement by a governing board, the board may enter into a lease-
7920 purchase agreement for capital improvements, including equipment.

7921 (c) The governing boards of the exempted schools may enter into lease-purchase
7922 agreements without seeking the approval of the ~~commission~~ OPE. The governing
7923 boards, subject to the jurisdiction of the ~~commission~~ OPE, may enter into lease-
7924 purchase agreements of less than \$1.5 million, without obtaining approval of the
7925 ~~commission~~ OPE.

7926 (d) A lease-purchase agreement constitutes a special obligation of the State of West
7927 Virginia. The obligation may be met from any funds legally available to the ~~commission~~
7928 OPE, council or the institution and shall be cancelable at the option of the ~~commission~~
7929 OPE, council, or governing board at the end of any fiscal year. The obligation, or any

7930 assignment or securitization of the obligation, never constitutes an indebtedness of the
7931 State of West Virginia or any department, agency or political subdivision of the state,
7932 within the meaning of any constitutional provision or statutory limitation, and may not be
7933 a charge against the general credit or taxing powers of the state or any political
7934 subdivision of the state. The facts shall be plainly stated in any lease-purchase
7935 agreement.

7936 (e) A lease-purchase agreement shall prohibit assignment or securitization without
7937 consent of the lessee and the approval of the agreement as to form by the Attorney
7938 General. Proposals for any agreement shall be requested in accordance with the
7939 requirements of this section and rules of the ~~commission~~ OPE and council. In addition,
7940 any lease-purchase agreement that exceeds \$100,000 total shall be approved as to form
7941 by the Attorney General.

7942 (f) The interest component of any lease-purchase obligation is exempt from all taxation
7943 of the State of West Virginia, except inheritance, estate and transfer taxes. It is the intent
7944 of the Legislature that if the requirements set forth in the Internal Revenue Code of 1986,
7945 as amended, and any regulations promulgated pursuant thereto are met, the interest
7946 component of any lease-purchase obligation also is exempt from the gross income of the
7947 recipient for purposes of federal income taxation and may be designated by the
7948 governing board or the president of the institution as a bank-qualified obligation.

7949 139. West Virginia Code §18B-19-12 is hereby amended as follows:

7950 **§18B-19-12. Authorization to lease.**

7951 (a) Notwithstanding any other provision of this code to the contrary, the ~~commission~~
7952 OPE, council and governing boards may lease, or offer to lease, as lessee, any grounds,

7953 buildings, office or other space in the name of the state.

7954 (b) The ~~commission~~ OPE, council and governing boards have sole authority to select
7955 and to acquire by contract or lease all grounds, buildings, office space or other space,
7956 the rental of which is required necessarily by the ~~commission~~ OPE, council or
7957 institutions.

7958 (c) Before executing any rental contract or lease, the ~~commission~~ OPE, council or a
7959 governing board shall determine the fair market value for the rental of the requested
7960 grounds, buildings, office space or other space, in the condition in which they exist, and
7961 shall contract for or lease the premises at a price not to exceed the fair market value.

7962 (d) The ~~commission~~ OPE, council and each governing board may enter into long-term
7963 agreements for buildings land and space for periods longer than one fiscal year but not
7964 to exceed forty years.

7965 (e) Any lease shall contain, in substance, all the following provisions:

7966 (1) The ~~commission~~ OPE, council or governing board, as lessee, has the right to cancel
7967 the lease without further obligation on the part of the lessee upon giving thirty days'
7968 written notice to the lessor at least thirty days prior to the last day of the succeeding
7969 month;

7970 (2) The lease is considered canceled without further obligation on the part of the lessee
7971 if the Legislature or the federal government fails to appropriate sufficient funds for the
7972 lease or otherwise acts to impair the lease or cause it to be canceled; and

7973 (3) The lease is considered renewed for each ensuing fiscal year during the term of the
7974 lease unless it is canceled by the ~~commission~~ OPE, council or governing board before
7975 the end of the then-current fiscal year.

7976 (f) The ~~commission~~ OPE, council or institution that is granted any grounds, buildings,
7977 office space or other space leased in accordance with this section may not order or
7978 make permanent changes of any type thereto, unless the ~~commission~~ OPE, council or
7979 governing board, as appropriate, has first determined that the change is necessary for
7980 the proper, efficient and economically sound operation of the institution. For purposes of
7981 this section, a "permanent change" means any addition, alteration, improvement,
7982 remodeling, repair or other change involving the expenditure of state funds for the
7983 installation of any tangible thing that cannot be economically removed from the grounds,
7984 buildings, office space or other space when vacated by the institution.

7985 (g) Leases and other instruments for grounds, buildings, office or other space, once
7986 approved by the ~~commission~~ OPE, council or governing board, may be signed by the
7987 chief executive officer, or designee, of the ~~commission~~ OPE, council or institution.

7988 (h) Any lease or instrument exceeding \$100,000 annually shall be approved as to form
7989 by the Attorney General. A lease or other instrument for grounds, buildings, office or
7990 other space that contains a term, including any options, of more than six months for its
7991 fulfillment shall be filed with the State Auditor.

7992 140. West Virginia Code §18B-19-13 is hereby amended as follows:

7993 **§18B-19-13. Real property contracts and agreements.**

7994 (a) In addition to the requirements otherwise provided in this article, any purchase of real
7995 estate, any lease-purchase agreement and any construction of new buildings or other
7996 acquisition of buildings, office space or grounds resulting from these transactions, by the
7997 governing board of a community or technical college shall be approved by the
7998 ~~commission~~ or council, as appropriate, and provided to the Joint Committee on

7999 Government and Finance for prior review, if the transaction exceeds \$1 million;
8000 ~~Provided, That the exempted schools shall not be required to get the approval of the~~
8001 ~~commission.~~

8002 (b) Notwithstanding any provision of this code to the contrary, any acquisition, bequest,
8003 donation or construction of new buildings, office space or grounds exceeding \$1 million
8004 in appraised value or requiring \$1 million in repairs and renovation or lease payments
8005 over the lifetime of the lease, made or accepted by an institution's research corporation
8006 established by article twelve of this chapter or an affiliated foundation of an institution
8007 under the jurisdiction of the council, shall be approved by the council.

8008 (c) The ~~commission~~, council and each governing board of a state institution of higher
8009 education shall provide the following to the Joint Committee on Government and
8010 Finance:

8011 (1) A copy of any contract or agreement to which it is a party for real property if the
8012 contract or agreement exceeds \$1 million; and

8013 (2) A report setting forth a detailed summary of the terms of the contract or agreement,
8014 including the name of the property owner and the agent involved in the sale.

8015 (d) The copy and report required by subsection (b) of this section shall be provided at
8016 least thirty days before any sale, exchange, transfer, purchase, lease-purchase, lease or
8017 rental of real property, refundings of lease-purchases, leases or rental agreements,
8018 construction of new buildings, and any other acquisition or lease of buildings, office
8019 space or grounds.

8020 (e) A contract or agreement that is for the lease purchase, lease or rental of real
8021 property, where the costs of real property acquisition and improvements are to be

8022 financed, in whole or in part, with bond proceeds, may contain a preliminary schedule of
8023 rents and leases for purposes of review by the committee.

8024 (f) For renewals of contracts or agreements required by this section to be reported, the
8025 ~~commission~~, council or governing board shall provide a report setting forth a detailed
8026 summary of the terms of the contract or agreement, including the name of the property
8027 owner.

8028 (g) The Joint Committee on Government and Finance shall meet and review any
8029 contract, agreement or report within thirty days of receipt.

8030 (h) Each governing board of a community or technical college shall provide to the
8031 ~~commission or~~ council, as appropriate, a copy of any contract or agreement submitted to
8032 the Joint Committee on Government and Finance pursuant to this section.

8033 141. West Virginia Code §18B-19-14 is hereby amended as follows:

8034 **§18B-19-14. Authorization for sale lease-back.**

8035 (a) Notwithstanding any other provision of this code to the contrary, a governing board of
8036 a community or technical college may sell any building that is on unencumbered real
8037 property to which the board holds title and may lease back the same building if the
8038 governing board obtains approval of the council ~~or confirmation by the commission, as~~
8039 ~~appropriate, before incurring any obligation: Provided, That the exempted schools shall~~
8040 ~~not be required to obtain such approval or confirmation of the commission.~~ The board
8041 shall deposit the net proceeds of the transaction into a special revenue account in the
8042 State Treasury to be appropriated by the Legislature for the use of the institution at
8043 which the real property is located. Prior to such action, the board shall take the following
8044 steps:

8045 (1) Provide for the property to be appraised by two licensed appraisers. The board may
8046 not sell the property for less than the average of the two appraisals;

8047 (2) Providing notice to the public in the county in which the real property is located by a
8048 Class II legal advertisement pursuant to section two, article three, chapter fifty-nine of
8049 this code;

8050 (3) Holding a public hearing on the issue in the county in which the real property is
8051 located;

8052 (4) For real property with a proposed sale price of \$50,000 or greater, ten days prior to
8053 the placement of the Class II legal advertisement, providing written notice to the county
8054 commission and municipalities in the county in which the real estate property is located
8055 and all members of the Legislature, and

8056 (5) Retain independent financial and legal services to examine fully all aspects of the
8057 transaction.

8058 (b) The sale may be made only to a special purpose entity that exists primarily for the
8059 purpose of supporting the institution at which the building is located.

8060 142. West Virginia Code §18B-19-16 is hereby amended as follows:

8061 **§18B-19-16. Condemnation generally.**

8062 (a) The ~~commission~~ OPE, council and governing boards each may acquire land or
8063 buildings by condemnation for the use and benefit of any state institution under its
8064 jurisdiction. A condemnation proceeding conducted pursuant to this section is governed
8065 by chapter fifty-four of this code.

8066 (b) The ~~commission~~ OPE, council and governing boards each may condemn any

8067 interest, right or privilege, land or improvement, which in its opinion is necessary, in the
8068 manner provided by law for the acquisition by this state of property for public purposes.
8069 The state is under no obligation to accept and pay for any property condemned and may
8070 pay for the property only from the funds provided for that purpose.

8071 (c) In any proceeding to condemn, the order shall be made by the court having
8072 jurisdiction of the suit, action or proceedings. A bond or other security may be required
8073 by the court securing the property owner against any loss or damage to be sustained by
8074 reason of the state's failure to accept and pay for the property. The bond or security may
8075 not impose liability or debt on or of the state as contemplated by the Constitution of the
8076 State in relation to state debt.

8077 143. West Virginia Code §18B-19-17 is hereby amended as follows:

8078 **§18B-19-17. Legislative rule.**

8079 The ~~commission~~ OPE and council jointly shall propose a rule or rules for legislative
8080 approval in accordance with article three-a, chapter twenty-nine-a of this code, to
8081 implement this article.

8082 144. West Virginia Code §18B-19-18 is hereby amended as follows:

8083 **§18B-19-18. Reporting.**

8084 (a) By July 1, 2013, and annually thereafter, the ~~commission~~ OPE and council shall
8085 provide a general status report to the Legislative Oversight Commission on Education
8086 Accountability on the progress being made in implementing the state-wide capital
8087 development plan and on the progress of the governing boards in implementing the
8088 objectives of institutions' campus development plans.

8089 (b) The process required by the ~~commission~~ OPE and council for reporting by the
8090 governing boards shall be included in the rules required by section seventeen of this
8091 article.

8092 145. West Virginia Code §18B-19-19 is hereby amended as follows:

8093 **§18B-19-19. Applicability to certain institutions.**

8094 The governing boards of the exempted schools each may, without obtaining approval of
8095 the ~~commission~~ OPE, take any action described or set forth in this article that otherwise
8096 would require the approval or confirmation of the ~~commission~~ OPE. The respective
8097 governing board shall provide notice of the action to the ~~commission~~ OPE. If the
8098 ~~commission~~ OPE requests additional information relevant to the action from the
8099 respective governing board, the governing board shall provide information regarding the
8100 action to the ~~commission~~ OPE.

8101

8102 NOTE: The purpose of this bill is to amend statutes pertaining to the Higher Education Policy
8103 Commission to (a) eliminate the Higher Education Policy Commission, (b) create the Office of
8104 Postsecondary Education, and (c) provide for the transfer of certain administrative and service
8105 functions heretofore performed by the Higher Education Policy Commission to the Office of
8106 Postsecondary Education.

8107 Strike-throughs indicate language that would be stricken from a heading or the present law and
8108 underscoring indicates new language that would be added.